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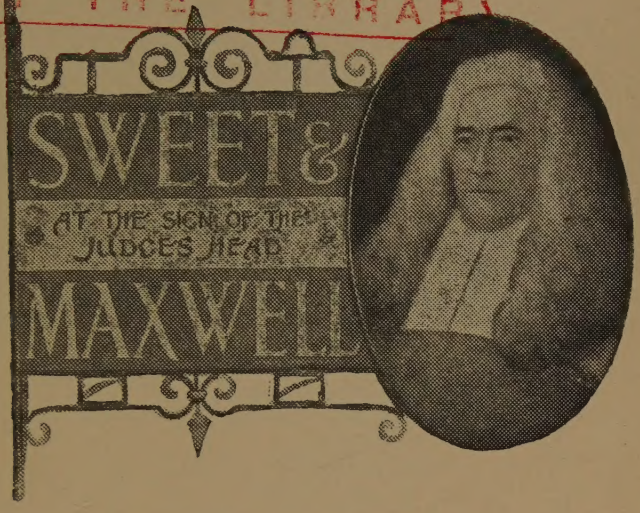

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MANUAL OF MODERN MINING LAW AND PRACTICE

INCLUDING

THE MINES WORKING FACILITIES AND SUPPORT ACTS, 1923-1925

THE MINING INDUSTRY ACT, 1926

THE COAL MINES ACT, 1930

BY

P. GORDON BAMBER, ASSOC. M.I.MIN.E.,

OF GRAY'S INN, BARRISTER-AT-LAW

AND

THE PRACTICE OF THE RAILWAY AND CANAL COMMISSION

TOGETHER WITH

AN ANALYSIS OF THE ORDERS MADE ON MINING APPLICATIONS

BY

J. J. CLARE HUNT,

SECRETARY TO THE RAILWAY AND CANAL COMMISSION.

LONDON:

SWEET & MAXWELL, LIMITED,

2 & 3 CHANCERY LANE, W.C.2.

1930.

(Printed in England).

PRINTED IN GREAT BRITAIN BY
THE EASTERN PRESS, LTD., LONDON AND READING.

1000604565 LC4803137O

PREFACE

SEVERAL years have passed since the publication of our work on the "Mines Working Facilities and Support Act, 1923" and the Rules appertaining to the practice of the Railway and Canal Commission. A considerable amount of legislation affecting the coal mines of Great Britain has been placed on the Statute Book since that date, resulting in important amendments of and addition to the existing legislature. In this work we have attempted to bring the law of "Mining facilities" and the practice appertaining thereto up to date. The original work on the 1923 Act has been considerably amended and the present work includes Part II of that Act affecting the law of Mining Support in relation to railways and coal mines; the Mining Industry Act, 1926; and the Coal Mines Act, 1930, together with notes on the important sections of these Acts. There is also a summary of the orders made by the Railway and Canal Commission from 1923 onwards, which it is hoped will be of assistance in formulating orders of the Court in future proceedings; exemplifying the jurisdiction of the Commission.

Where reference is made in any Statute to another Statute we have as far as space will permit set out the

relevant section of the Statute referred or we have given its effect.

The authors are indebted to Mr. E. G. Bilton, Mr. Bamber's clerk, for the great assistance he has rendered in revising the proofs.

It is hoped that this work will be of assistance to all who are interested in the law and practice of Mining Facilities and Colliery Law in relation to railway support.

P. GORDON BAMBER.
J. J. CLARE HUNT.

7 NEW SQUARE,
LINCOLN'S INN, W.C.
September 25, 1930.

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MINES (WORKING FACILITIES AND SUPPORT) ACT, 1923.

[13 & 14 Geo. 5, c. 20.]

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An Act to make provisions for facilitating the working of minerals and for imposing restrictions on the working of minerals required for the support of railways, buildings and works. [18th July 1923.]

PART I.

RIGHTS OF WORKING MINERALS AND RIGHTS ANCILLARY THERETO AND OF SUPPORT.

Rights of working and rights ancillary to the working of Minerals.

Power to grant right to work minerals which would otherwise be unworkable.

1.—(1) Where there is danger of minerals being left permanently unworked[1]—

(*a*) *by reason of the minerals being comprised in or lying under land which is or has been copyhold land, or land subject to a lease exception reservation restriction covenant or condition, or otherwise not being capable of being worked without the concurrence of two or more persons*[2]*;*

(*b*) *by reason of the minerals being owned in such small parcels that they cannot be properly or conveniently worked by themselves*[3]*;*

a right to work the minerals may be conferred in the manner and subject to the provisions hereinafter appearing *on any person having an interest in them, or, in the case of minerals owned in small parcels, in minerals adjacent to them,* who is desirous of working them either by himself or through his lessees.[4]

(2) For the purposes of this Part of this Act, references to working minerals shall include references to working, carrying away, treating, and converting minerals.[5]

[1] (a) This condition no longer applies to an application for the working of coal. Section 13 of the Mining Industry Act, 1926, now regulates all applications for the working of coal and for the grant of ancillary rights in connection therewith. See notes to p. 88 *et seq.* In all applications for the working of minerals other than coal this condition still applies.

(b) This sub-section constitutes a condition precedent to all other applications under this section of the Act. No similar restriction applies to applications under sections 2 and 3. In all applications under this section and section 3 there is a further condition precedent, namely, that the right applied for cannot be obtained by private arrangement—*see* section 4, sub-sections 1 and 2. It is questionable whether this condition still applies to applications for the working of coal, although it is advisable to insert such a plea in the application.

Danger.

It is a matter of fact for the Court to decide whether in any particular case there is or is not a danger of the minerals not being worked. The word "danger" has been interpreted somewhat widely, as all circumstances both present and future, affecting the working of the minerals, the subject of the application, have to be considered. In a mining venture, minerals which have been acquired by a company with a view to future requirements, may be valueless in course of time, although commercially valuable to-day.

It may further be pointed out that the introduction of the word "danger"

introduces the economic desirability of the minerals being worked, and it no doubt influences the attitude of the Court to a considerable extent. The more minerals the country can produce and dispose of in industry, the greater would be our national wealth. The Court has in the past construed this section so as to assist applicants to work coal so far as the provisions of the Act allow and with due regard to the rights under such Act of other parties interested. This word gave the Court a discretion which otherwise it might not have had.

Under the provisions of section 13 of the Mining Industry Act, 1926, "any person" may apply for a right to work or for ancillary rights. The wording of sub-section 1 of the above section suggests that it would include an application by a colliery whose works adjoin or are approaching the coal areas of another colliery, for the preferential working in the areas of such other colliery, if the latter cannot conceivably work their coal for a period of many years ahead. Such an application would lie whether the coal was owned by the colliery in fee simple or they had acquired leases of the coal seams. Whether the immediate working of the coal or seam or other minerals is in the national interest is a question of fact, and as such has to be decided by the Commission—see section 6, sub-section 4.

Although the question of the danger of the minerals not being worked is no longer a condition to be complied with in the case of applications for the working of coal, decisions on this point are of assistance as tending to show the extent to which the Court in the past has applied this condition in the case of colliery applications :—

Re Nunnery Colliery's Application (1924), 69 S. J. 52; Bamber's Mining Cases, vol. i, p. 1. The grounds of the application were that unless the minerals were worked by the applicants they would be lost to the nation. The application was sanctioned. In this case there were numerous owners of small plots, and it was impossible to obtain the rights asked for from them. For similar reasons the case of the *Calstock Rural District Council* v. *Cornwall County Council* (Bamber's Mining Cases, vol. i, p. 79), an application to work granite was granted. This case was noteworthy because a public authority were granted the right to work.

Re Earl Fitzwilliam (April 22, 1925, unreported). This was a similar application to that of the Nunnery Company, and it was held by the Court that the difficulty of ascertaining the owners of the small parcels of coal would prevent the possibility of negotiating and result in the coal not being worked.

Re William Evans (May 11, 1927, unreported). The Court sanctioned the application on the grounds that as the applicants' coal field surrounded the area, the subject-matter of the application, no one other than the applicants could possibly work the area.

Re New Hucknall Colliery Co., Ltd. (1925), 41 T. L. R. 383. The applicants were granted leave to remove a pillar of coal which in the colliery company's plan of working had been left for the support of a church, churchyard, and the vicarage. The order was made because the Court were satisfied that by a continuous system of long wall working, little (if any) damage would be sustained by the buildings, and that such damage would be the subject of compensation, and that it was more in the national interest to work the coal than to retain support for the church and surrounding lands and buildings.

Minerals.

The definition of minerals in section 14 is confined to Part I only of this Act. The definition is very wide and practically includes every metalliferous and non-metalliferous material, for instance, iron, lead and other base metals, coal, granite (*a*), slate, clay, chalk, sand, etc.

(*a*) *Calstock R. D. C.* v. *Cornwall C. C.*, Bamber's Mining Cases, Vol. I, p. 79.

As this definition does not apply to Part II of the Act, it is necessary to consider the difference arising between cases which may be brought under Part I of the Act, and those arising under Part II, as laid down by earlier cases under the Mining Code.

The meaning of the word "minerals" in connection with the words "mines of coal, ironstone, slate and other minerals," contained in the Railways and Waterworks Clauses Act has been fully considered under those statutes (*b*).

It must be borne in mind that these judgments were given in connection with the position of public undertakings under the above or similar statutes, which had acquired the surface of the land under statutory powers. The exception of *other minerals* under the Code was therefore one of extreme importance, as it gave rise to the question what was or was not a mineral in any particular case. The general effect of these judgments is that under the Code, where a particular substance is the regular and main substrata of any district, and part of the substrata consists of another substance, that this latter substance is the subject of the exception under the Code, and is the mineral referred to under the particular statutes concerned (*c*). Where the ordinary soil of the whole district is a mineral, this is not a mineral within the meaning of section 77 of the Railways Clauses Consolidation Act, 1845 (*d*). This, briefly, is the effect of the rules laid down in those cases. Under Part I of the Act the position is changed and any substance, whether it is the exception or not, is a mineral within the meaning of this Part of the Act—*also see* note to section 13.

The word "mines" does not occur in section 14, and for this reason it is suggested that a grant of a right to work minerals does not actually give an applicant any rights with reference to the chamber in which the minerals are contained. The grant of a right to work minerals would not therefore technically pass to the applicant rights over or an interest in the vacant space resulting from the working out of the minerals. It is therefore suggested that in every application under section 1 an application under section 3 should be made for the grant of the ancillary right over and in the chamber or vacant space resulting from the workings. This does not now refer to applications for the working of coal under section 13 of the Mining Industry Act, 1926. In some cases the right might be of considerable value (*e*). This is particularly so in the case of copyholds as the lord of the manor having the ownership of the minerals, the tenant has the possession, and after the minerals have been worked the vacant space left by the workings is vested in the copyholder (*f*).

"Permanently Unworked."

The question of time has to be considered in conjunction with the question of the danger of the minerals being left unworked.

Again the same argument applies. What is permanency in an industry such as the coal trade? With science in its present stage of inquiry, coal might never be required for fuel in fifty years from now, although such a

---

(*b*) See *North British Ry. Co.* v. *Budhill*, [1910] A. C. 116; *Great Western Ry. Co.* v. *Carpalla*, [1910] A. C. 83; *Caledonian Ry. Co.* v. *Glenboig Union*, [1911] A. C. 290; *Symington* v. *Caledonian Ry. Co.*, [1912] A. C. 87.

(*c*) See test laid down by Lord Halsbury in *Lord Provost of Glasgow* v. *Farie*, 13 A. C., at pp. 669-670, and see *Hext* v. *Gill*, L. R. 7 Ch. 699.

(*d*) *Lord Provost of Glasgow* v. *Farie* (*ante*); *Great Western Ry. Co.* v. *Blades*, [1901] 2 Ch. 624.

(*e*) *Proud* v. *Bates*, 34 L. J. Ch. 416, 411; *Hamilton* v. *Graham*, L. R. 2 Sc. and D. 166; *Ramsay* v. *Blair*, 1 A. C. 701; *Ballacorkish* v. *Harrison*, L. R. 5 P. C. 49; *Met. Ry. Co.* v. *Cosh*, 13 Ch. D. 607, 614; *Davis* v. *Treharne*, 6 A. C. 460; *Eardley* v. *Granville*, 3 Ch. D. 826, 834; and MacSwinney on Mines (5th ed.), at p. 15 (43), p. 35 (134).

(*f*) *Eardley* v. *Granville*, 3 Ch. D. 833; *Hext* v. *Gill*, L. R. 7 Ch. 712; *Att.-Gen.* v. *Tomline*, 5 Ch. D. 762; *Re Markham Main Colliery Co., Ltd.* (1925), 41 T. L. R. 672.

possibility is remote. It is suggested that permanence does not bear its usual meaning, but should rather be interpreted as meaning a considerable time or possibly not at all. It is impossible for anyone to look forward into the future and say a state of affairs must continue to exist. A permanent obstacle must be in the way of working such minerals, and that might be legally defined as an obstacle which cannot be overcome by any reasonable means except within such a time and at such an expense as would render the objects of the adventure, as a matter of business, wholly unreasonable (*g*).

The words used in this section are somewhat difficult to interpret, and it is suggested that they were intentionally included by the Legislature to enable the Court to consider applications which, if the language used had been stricter, could not have been considered as coming within this section.

If the sub-section had been worded " Where minerals will be left permanently unworked," the resulting interpretation would naturally have to be much more strict.

It is submitted that under this section and sections 2 and 3 the Court would have power to consider and, if necessary, amend contracts *inter partes*, namely conveyances or leases, or other documents of title if it can be shown that in the national interest such amendment or alteration is requisite for the better or more economical working of the mineral. The facts would have to be proved strictly, as this is a power which the Court would exercise in its discretion with the greatest possible care (*h*). Such a right is directly given to the Court under section 13, sub-section 2 of the Mining Industry Act, 1926, in the case of colliery leases.

[2] Mining Industry Act, 1926.

By section 13 of the above-mentioned Act this condition no longer applies to applications for the working of coal. Of course, these conditions have to be complied with in all other cases.

Lying Under.

The words " or lying under " suggest that if any of the restrictions set out in this sub-section apply to the minerals themselves the sub-section would apply. The words " or otherwise " are sufficiently wide to include practically every application in which a restriction attaches to the minerals or to the lands overlying those minerals or to both.

Two or More Persons.

These words would presumably include tenants in common or joint tenants of any particular area of minerals in addition to the surface. It is submitted that they would include two mining companies, or other applicants, both being interested in the same mineral area, whose interests are in conflict, and one and both of whom are making an application under this Act. They would also include two mineral owners interested in the same mineral area, one of whom has leased his interests to one company, whereas the other owner has leased his interests to another company. They also apply to all surface owners who are also owners of the minerals.

Copyhold Land.

They would further apply to the lord of the manor and a copyholder. And if the land has been enfranchised under the Copyhold Act, 1894, it must be remembered that by section 23, sub-section 1 of that Act the enfranchisement does not affect the right of the lord of the manor " in or to any mines, minerals, limestone, lime, clay, stone, gravel, pits or quarries whether in or under the land enfranchised or not, . . . or any powers which in respect of property in the soil might but for the enfranchisement have been exercised for the purpose of enabling the lord or tenant, their or his agents, workmen, or assigns, more

(*g*) See *Nelson* v. *Dahl*, 12 Ch. D. 568, 593.
(*h*) See notes to section 13, and p. 42.

effectually to search for, win, and work any mines, minerals, pits, or quarries, or to remove and carry away any minerals, limestone, lime, stones, clay, gravel, or other substances had or gotten therefrom " unless the lord gives his express consent in writing to any such rights being acquired by the tenant. So that even if the land has for a long while been enfranchised, it is necessary to join the lord of the manor with the freehold tenants.

The position of the lord and the copyholder have also to be considered with reference to the compensation to be paid on account of royalties. The Act has in effect made the veto of the copyholder not effective, although it still exists. The colliery company usually bears the liability for loss of support and consequent damage. The copyholder is entitled to intervene to claim a share in the royalties as against the lord of the manor (*i*).

Restrictions and Reservations.

These words apply to any restriction or reservation affecting the minerals or the surface or both. They are wide and include practically every conceivable case in which land or the minerals thereunder are conveyed or leased subject to grants, rights of way, or other forms of easements, restrictions or reservations, and those innumerable cases in which the lands or minerals are not entirely free from covenants or conditions.

[3] Mining Industry Act, 1926, s. 13.

This condition no longer applies on an application for the working of coal, but remains in all other cases.

" Small Parcels."

These words include the owners of the surface and minerals. It is submitted that they also include the owners of the minerals alone, *e.g.*, where two companies have conflicting interests in the same area or areas of minerals, either as owners in fee simple or lessees or otherwise.

It is a matter for determination whether these words include " a small parcel," namely, when there is only one owner of one parcel of minerals; but a small parcel owned by tenants in common or joint tenants is within the meaning of the Act, as the interest of each owner is a small parcel (*j*).

The question as to what are or what are not "small parcels" requires consideration. An area of 100 acres may be a small parcel when considered as part of a large coal field, or it may be an area that can be worked alone. The test as to whether an area is a small parcel or not appears to be this: Is it a self-contained coal field big enough to permit it being worked separately by the sinking of a pit to work the coal? If this is so, the area itself is not a small parcel, although the various parts of the area separately owned are small parcels. This argument might possibly not apply to certain coal fields where small areas are worked by slants from the outcrop. The whole question is one of fact. If the area cannot profitably be worked except from a neighbouring colliery, it certainly appears to be a small parcel. If the area is owned by a large number of small owners, this undoubtedly is an area of " small parcels." The words " properly and conveniently worked by themselves " suggest that the area is or would be part of a larger coal field and support the proposition set out above. Although for the sake of clearness the comparison is made in the case of a coal field, the same argument applies in the case of all other mines or mineral areas.

These words do not limit the application of the Act to those cases only, as areas coming within sub-section 1 (a) are not so limited.

" Worked " includes winning, getting, carrying away, and searching for any minerals—see sub-section 2.

(*i*) *Hext* v. *Gill*, L. R. 7 Ch. 699; *Att.-Gen.* v. *Tomline*, 5 Ch. D. 750; *Lewis* v. *Branthwaite*, 2 B. & Ad. 443; *Re Markham Main Colliery, Ltd.* (1925), 134 L. T. 253; 41 T. L. R. 672.

(*j*) *Re New Hucknall Colliery Co., Ltd.*, 41 T. L. R. 383.

[4] The words in italics no longer apply in the case of an application to work coal, as "any person" may apply. See Mining Industry Act, 1926, s. 13.

In the manner and subject to the provisions hereinafter appearing.

See particularly section 4, and the notes thereon, which limits the application of the Act as to the possibility of the right applied for being obtained by private arrangement, and section 6 and notes thereon, which limits the discretion of the Court in certain instances as to its awards on the grounds of national interest. It is questionable whether section 4 still applies to applications under the Mining Industry Act, 1926, as there is a contradiction in terms between the full powers given under section 1 of that Act and section 4 of the present statute, which places certain statutory limitations on applications. On the other hand, section 13, sub-section 5, provides that the powers given under section 13 are subject to the terms and conditions of the principal Act, being the Act now under consideration.

"Any person" would appear to include *inter alia* one owner of part of the minerals where there may be several owners thereof. The word is intentionally in the singular number.

"Having an interest in them" applies in every case of an application to work minerals other than coal within this section, and it is submitted that the limitation with reference to small parcels (see below) is in addition to and not in limitation of this part of the sub-section. To take an example, in the case of a colliery a seam of coal is undoubtedly a small parcel, and if colliery A is a co-lessee of one seam with another colliery B, colliery A is a person having an interest in the seam, although it is a small parcel, and so is colliery B.

Minerals Owned in Small Parcels.

This is an additional facility to applicants for working small parcels whose areas adjoin the area over which an application is being made, and not in limitation of the remainder of the section.

"'Any interest' must include an equitable interest"— (*per* Fry, L.J., *Re Casey* (1892), 1 Ch., at p. 104).

Adjacent presumably includes subjacent in the case of seams of minerals.

Working by himself or lessees.

The names of proposed lessee or lessees should be set out in the application. The usual order of the Court is that no grant made under the Act shall be assigned or the area affected thereby sub-let, without the sanction of the Railway and Canal Commission. A corporation or public authority can make an application for an award to themselves, to be worked by their lessees and presumably by themselves, as, if they have an interest in the minerals, they are a "person" within the meaning of the Act (*k*).

It is further submitted that as this Act is an enabling piece of legislation, the words "any person having an interest in them" would enable a public authority to work minerals actually as a trading concern. In the case of statutory bodies and public authorities, if this Act is not in direct conflict with the statute giving these authorities their particular powers, then such an authority would be a person within the meaning of the Act (*l*).

In the case of *Pharmaceutical Society* v. *London and Provincial Supply Association*, 49 L. J. Q. B. 736, Lord Blackburn says: "The word 'person' may very well include both a natural person (a human being) and an artificial person (a corporation). I think that in an Act of Parliament, unless there be something to the contrary, probably . . . it ought to be held to include both. . . . Circumstances, and indeed very slight circumstances, in the context might show which way the word is to be construed in an Act of

(*k*) See Interpretation Act, 1889, s. 2, sub-s. 1
(*l*) See *Calstock R. D. C.* v. *Cornwall C. C.* (*supra*).

Parliament. And I am quite clear about this, that whenever you can see the object of the Act requires that ' person ' shall have the more extended sense or the less extended sense, then you should apply the word in that sense and construe the Act accordingly."

[5] Although the words " winning, searching and getting " for minerals are not set out, they are obviously included in this sub-section and have been used in judgments by the Commission under the Act.

Generally.

In *Re Nunnery Colliery Company's, Ltd., Application* (*m*) it was decided that the Act applies to those cases in which a large number of persons separately own small areas of adjacent surface and the minerals subjacent thereto. It is in the national interest that the minerals applied for by an applicant should be worked by him. This case resulted in a judgment by consent, but the principle, it is submitted, is accepted.

In another application the minerals in the area affected by the application had been allotted under an inclosure award to certain allottees for the repair and inclosure of the allottees' lands, but not for sale. The applicants were a rural district council, and they owned minerals adjoining this area and were the successors in title to one of the allottees. The Court granted a right to the applicants to work this area, the work to be carried on through their, the applicants', lessees. It would therefore appear that where minerals have not been reserved in favour of the lord of the manor, owners of wastes or commonable lands are within the Act and can apply for a grant to work, and this would also be so even against the lord's reserved minerals (*n*).

The question of the meaning of the word " soil " in an Inclosure Act has to be considered in this direction (*o*).

It is a question for consideration whether an application for the variation of the terms of a lease or contract which, owing to its stringency or otherwise, may result in the minerals demised by the lease or the subject of the contract not being worked at all, is within this section of the Act. Can these private agreements be varied or modified under the statute so as to enable minerals to be worked? It is submitted, as the object of the Act is to avoid a loss of minerals, that if it can be shown to the satisfaction of the Court that such minerals will never be worked for the reasons stated, and that it is in the national interest to work them, the Court has jurisdiction to vary the terms of any particular agreement. This power is now given to the Court by the provisions of the Mining Industry Act, 1926, s. 13, sub-s. 2, in the case of coal leases.

In all applications for the working of minerals (other than coal) it is necessary to keep in mind the provisions of section 4. Under this section it is a condition precedent to the application for the applicants to prove that it was not reasonably practicable to obtain the rights applied for by private arrangement for any of the four reasons given in the section. In the case of coal the question is open to doubt.

Reference should also be made to the provisions of section 5, sub-sections 3 and 4, and the proviso to that sub-section. The Board of Trade have to satisfy themselves that there is *prima facie* a right of application. What this means, is not easy to determine. It seems quite clear that the Board of Trade have no judicial duties entrusted to them. It would appear that, on a proper interpretation of this section and section 8, the Board of Trade are required to

(*m*) [1924] W. N. 255; 69 S. J. 52; Bamber's Mining Cases, Vol. I, p. 1.

(*n*) See *Calstock R. D. C.* v. *Cornwall C. C.* (*ante*) the various Copyhold Acts on the question of the conveyance of non-manorial minerals (these now come within the Act), and see the *St. Catherine College Cases.*

(*o*) See *Townly* v. *Gibson*, 2 T. R. 701; *Thomson* v. *St. Catherine College*, [1919] A. C. 468; *St. Catherine College* v. *Rosse*, [1916] 1 Ch. 73; *Wakefield* v. *Buccleuch*, L. R. 4 Eq. 613; *Buccleuch* v. *Wakefield*, L. R. 4 H. L. 377; *Rosse* v. *Wainman*, 14 M. & W. 859; *Ewart* v. *Graham*, 7 H. L. C. 331.

make certain that an applicant has a *prima facie* case to be heard by the Court. The merits or demerits of the case are presumably a matter for the Court to decide.

All applications to work minerals alone or in conjunction with ancillary rights must set out that the application is made in pursuance of section 1.

From the wording of section 1 it would appear that the persons who can make applications are : The owners of the minerals in fee simple, if they are not subject to a lease or other term; lessees, licensees and other persons to whom minerals are demised or granted and who are entitled to work the same; owners in fee simple, and lessees, licensees and others who own minerals as neighbours in any of these capacities and adjacent to minerals it is desired to work, subject only to the limitation that the latter right can only be exercised in the case of minerals owned in small parcels. It is a question for determination whether a copyholder by right of possession could apply to work manorial minerals.

A lessor of minerals cannot apply for any ancillary right, during the term of his lease, under section 3, as he is not the person entitled to work the minerals.

As, however, he has an interest in minerals adjacent to those in lease he would appear to come within section 1 for the purposes of an application by him for the right to work. He could then apply under section 3.

The words " working, carrying away, treating and converting " have received the widest possible interpretation at the hands of the Court. This interpretation has been confirmed by the Court of Appeal on appeal from the Court of the Railway and Canal Commission (*p*).

The expression " working " is not confined to working coal in the pit, and this expression combined with " carrying away " has been held to authorise the carrying away of coal in the process of working it from the pit mouth over adjacent lands to a harbour many miles away. The words are not to be construed in a technical sense. It is submitted that the expressions " treating " and " converting " minerals would authorise an application for the working of minerals by treatment and conversion of, say, coal into coal gas or electricity and when so treated and converted the product could be conveyed over a large area in mains as the " carrying away " of minerals so worked as aforesaid.

Power to grant right to work minerals where adjustment of boundaries between two mines agreed.

2. Where the persons working two adjoining mines have agreed on an adjustment of boundaries between the mines with a view to reducing the amount of minerals to be left unworked between the mines, or to enabling the minerals to be worked more efficiently or more economically, and effect cannot be given to the agreement by reason of the failure or refusal of the lessors of the mines or the owners of the surface, or any of them, to concur, a right to work the minerals in accordance with such adjusted boundaries may be conferred in the manner and subject to the provisions hereinafter appearing on the persons working the mines respectively.[1]

[1] The words " working two adjoining mines " do not appear to limit the adjustment of boundaries to the mines actually being worked. This would be disadvantageous and not in accordance with mining practice, as it is the custom to acquire minerals many years ahead of requirements, and a strict interpretation of this section would limit the effect of the Act. It is submitted that these words are inserted to determine who is entitled to apply under this

(*p*) See *Re Tilmanstone (Kent) Collieries, Ltd., Application,* [1928] 1 K. B. 599, C. A.; 97 L. J. K. B. 160; 138 L. T. 452; 44 T. L. R. 167; 19 Ry. & Can. Tr. Cas. 26, C. A.

section, and that any minerals within the area in lease or conveyed to a mine owner, would be within this section.

The reasons for an adjustment of boundaries are fully set out, and are under three headings, namely: Working additional minerals; efficient working; and economical working; and all such applications must therefore come within one of these three headings. In addition the grant must be in the "National Interest," which is the keynote of the whole statute including the variations made therein by the Mining Industry Act, 1926.

It would appear from the wording of this section that the only persons whose consent having been refused, are the persons whose concurrence is required to bring the Act into operation, are (a) lessors of the mines, (b) owners of the surface, and (c) lords of the manor for manorial minerals; the copyholder being a party where his consent is required as having the possession of the minerals (*q*). It would therefore appear that any agreement between lessees of the minerals or owners in fee simple of the minerals, unless these latter were also the owners of the surface, would not be within this section of the Act.

It is, however, submitted that where two colliery companies have entered into a boundary agreement, which one of them for good reasons desires to terminate, an application could be made under section 3 for the termination of the agreement as an ancillary right.

In this particular form of application it would appear, on a strict interpretation of the statute, that unless the grant of the adjustment of boundaries will result in subsidence damage, no objections can be heard therein—see section 6, sub-section 4.

Applications can be made for leave to work barriers or pillars of minerals which have been left unworked in conformity with the terms of a lease, or reservations under a conveyance. It would be necessary to satisfy the Court that the damage resulting from the removal of a pillar would not be considerable to surface buildings or to the mines, and that proper compensation for damage would be paid. The whole question would appear to turn on whether the pillars or barriers were reasonably required for the protection of the surface or subjacent minerals, and the safety of adjoining mines. The position of the applicants requires consideration as an application for the removal of a barrier which is in effect only a line of demarcation entered into with a neighbouring colliery owner to define a sphere of influence would appear to come within section 3, as an ancillary right, as the barrier, although real, is in effect only a limitation of area by contract *inter partes*—see section 3 and notes thereon.

The application will be drawn and submitted to the Board of Trade for approval. It is suggested that as an adjustment of boundaries may result in some of the boundary coal being worked, any application under section 2 which may have this result should also include an application for ancillary rights under section 3. The provisions of section 4 do not appear to apply to this section, although they would of necessity apply if an application is made under both section 2 and section 3.

Power to grant ancillary rights for facilitating the working of minerals.

3.—(1) Where any facility, right, or privilege is required in order that minerals may be properly and conveniently worked by the person entitled to work the same, and the proper and efficient working of the minerals is unduly hampered by the inability or failure of that person to obtain such right, facility, or privilege (hereinafter referred to as an ancillary right), such ancillary right may be conferred in the manner and subject to the provisions hereinafter appearing on the person having the right

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(*q*) See *Hext* v. *Gill*, L. R. 7 Ch. 699; *Att.-Gen.* v. *Tomlaine*, 5 Ch. D. 750; *Lewis* v. *Branthwaite*, 2 B. & Ad. 443.

to work the minerals who is working or desirous of working them either by himself or through his lessees.[1]

(2) In particular, but without prejudice to the generality of the foregoing provision, such ancillary rights shall include[2]—

(a) A right to let down the surface[3];

(b) A right of air-way, shaft-way, or surface or underground wayleave, or other right for the purpose of access to or conveyance of minerals or the ventilation or drainage of the mines[4];

(c) A right to use and occupy the surface for the erection of washeries, coke ovens, railways, by-product works, or brick making or other works, or of dwellings for persons employed in connection with the working of the minerals or with any such works as aforesaid[4];

(d) A right to obtain a supply of water or other substances in connection with the working of minerals[5];

(e) A right to dispose of water or other liquid matter obtained from mines or any by-product works.[6]

(3) An ancillary right may be granted to a person to whom a right of working minerals is granted in pursuance of section one of this Act at the time when such last-mentioned right is granted or at any subsequent time.[7]

[1] Reference must be made to the Mining Industry Act, 1926, s. 13, sub-s. 3, which enacts :

"An ancillary right may be granted to a person to whom a right of working coal is granted in pursuance of this Part of this Act at the time when such last-mentioned right is granted or at any subsequent time."

The effect of this sub-section would seem to be that "any person" who applies or has applied for a grant to work coal should apply under section 13, sub-section 3.

Persons who are applying for the first time for ancillary rights only in connection with the working of coal or other minerals would apply under section 3 of the Mines (Working Facilities and Support) Act, 1923.

"Any facility, right, or privilege."

These words are sufficiently wide to bring within the Act practically any conceivable application for the grant of anything that may be necessary for the more efficient working of a mine, and for the removal of existing limitations on the working thereof.

When one speaks of giving or conferring a facility it is implied that the thing with regard to which you order a facility is an existing thing—Esher, M.R., *Darlaston* v. *L. & N. W. Ry. Co.*, [1894] 2 Q. B. 694.

A "privilege" is an advantage conferred "over and above the ordinary law"—*per* Esher, M.R., *Re Millar*, [1893] 1 Q. B. 327.

There are numerous definitions of rights and privileges, but these mostly have reference to particular statutes.

Minerals properly and conveniently worked.

This is the object of this section. The better working of minerals is the sole reason for an application that may be made under this section.

Inability or failure to obtain.

Section 4 must be considered in this direction. The applicant must have done all he can to obtain these rights privately and failed. It does not, however, necessarily follow that if the question of the payment that is demanded for the granting of any particular right is in issue, the applicant must necessarily pay what is asked. Section 4, sub-section 1 (d) provides for this, and where the question is one of price it is a question of fact whether the terms demanded are, having regard to the circumstances, unreasonable. An applicant who cannot sustain this point in Court and yet succeeds under another sub-section of section 4 might be mulcted in costs (*r*).

In the manner and subject to the provisions.

Sections 5 and 6 should also be considered in conjunction with this section before an application is submitted.

"The person having the right to work the minerals."

This would seem to apply to owners or lessees of the minerals and not to the owners of adjacent minerals. The phrase seems to qualify the rest of the sub-section.

[2] The words "without prejudice, etc." appear to be wide enough to include applications for the variation of agreements *inter partes* if such variations fall within the underlying principle of the section, namely, facilities in the working of minerals and national interest. It is submitted that leases may be reviewed and the restrictions in conveyances varied, subject of course to the payment of proper compensation to the parties adversely affected, if the variation should cause material damage to one or other of the covenanting parties, and with sufficient safeguards to enable a party affected under the order of the Commission to apply to the Commission for redress should improper advantage be taken of such order. Such a right is now granted under section 13, sub-section 2 of the Mining Industry Act, 1926, in the case of documents relating to coal.

[3] A right to let down the surface must be specially applied for. It is an ancillary right essential to the majority of applications under section 1. It is suggested that where no application is made to let down the surface, section 6, sub-section 4 should be considered on the question whether the objectors, if any, to the application have any *locus standi*. There may be cases in which the system of working is such that there need be no letting down of the surface (*s*). Damage from subsidence must be distinguished from letting down of the surface, as the system may be such that although there is very slight letting down there need not of necessity be damage therefrom. In applications for quarrying and similar workings, the application should be made to let down or remove the surface.

[4] These rights are of assistance in cases where, owing to the nature of the lease or other document of title, the applicants are unable to obtain necessary facilities for the working of minerals. It is suggested that the Court would consider the question of compensation payable to any lessor or surface owner, even where the amount of the same has been laid down in such document of title. In the case of a cash payment or premium for the grants asked for, the transaction is in fact a sale. Otherwise if it is in the nature of a rental, whether annual or otherwise, the right is one which vests subject to any condition as to a payment from time to time. The difference in the nature of the transaction is of importance because of the rights of the Inland Revenue authorities, mineral rights duty being payable by the land-

(*r*) *The Mynachdy Colliery Co.* (1903) *Ltd.* v. *The Executors of R. Clayton (decd.)*, Bamber's Mining Cases, Vol. I, p. 146.
(*s*) *Re Nunnery Colliery Co.'s Application*, *ante*.

lord. It is submitted that the Court has no jurisdiction to determine Inland Revenue matters. Rights of instroke and outstroke would likewise be considered, and in fact any right which is necessary for the better working of the minerals, but which cannot be obtained by private arrangement, could be applied for under this section. Section 4 must be considered in this connection and the necessary limitations on applications therein set out should be carefully considered. Even if the document of title contains a negative restriction the Court would apparently be empowered to override the restriction.

5 This right will presumably override the rights of riparian owners whose land adjoins a stream or river where the applicant's land does not adjoin a stream, river or other watercourse. If, for any reason, a water company or other statutory authority had mains near the applicant's works but refused to lay pipes to the works except on exorbitant terms, an application could be made for an order. The same argument would even apply to water supplies of private undertakings, if the undertakings' own supply was not unduly diminished by the requirements of the mineral worker. This appears to be a reasonable presumption from the wording of the section (*t*).

6 This would give the mine owner the right to drain his workings into old workings, or even into those of an adjacent and open mine so long as the rights of the adjacent mine owners were duly protected, and it was essential for the proper working of the applicant's minerals (*u*). The right of pollution of rivers and streams can obviously be granted by the Court, but the Rivers Pollution Act, 39 & 40 Vict. c. 75, and other local Acts must be considered in this connection, as there may and probably will be cases in which an applicant will find himself in conflict with existing statutes. It is needless to say that the Court will exercise their discretion judicially and make such regulations as may be necessary for the protection of health (*x*). The fact that this sub-section was included in the Act would presumably suggest that the Court shall exercise wide judicial powers in this direction, even if the exercise of such discretion may be in conflict with existing statute law. The question of national interest is the keynote of the Act and as such will be given effect to.

Certain decisions have been given by the Court on applications for ancillary rights and in other cases the Court have approved agreements arrived at by consent :

(1) *Rights to let down the surface* were granted : *Re Crawshaw & Warburton, Ltd.*, Bamber's Mining Cases, Vol. I, p. 68; *Re Sheffield Coal Co., Ltd., and Aston Coal Co., Ltd.* (1925), 42 T. L. R. 8, and second application unreported, Order November 30, 1926; *Re Charlesworth (J. & J.), Ltd. and Briggs (Henry) Son & Co., Ltd.* (1926), 43 T. L. R. 100; *Re Manners Colliery Co., Ltd.* (1926), 42 T. L. R. 773; *Re New Hucknall Colliery Co., Ltd.* (1925), 41 T. L. R. 383; *Re Haslegrave and Belton Colliery Co.*, unreported, Order June 9, 1928; *Re Earl Fitzwilliam*, unreported, Order April 22, 1925; *Re Burnyeat, Brown & Co., Ltd.*, unreported Order July 27, 1925; *Re Pope & Pearson, Ltd.*, unreported, two applications, Orders on January 12, 1926, and December 15, 1926, respectively; *Re Ingham's Thornhill Collieries, Ltd.*, unreported, Order November 19, 1926; *Re Askern Coal and Iron Co., Ltd.*, unreported, Order January 13, 1928; *Re Cortonwood Collieries Co., Ltd.*, unreported, Order November 8, 1928; *Re Sherwood Colliery Co., Ltd.*, unreported, Order February 25, 1929.

(*t*) *Insole* v. *James*, 1 H. & N. 243; *Weeks* v. *Howard*, 10 W. R. 557; *Gaved* v. *Martyn*, 19 C. B. (N.S.) 759; *Finch* v. *Birmingham Canal*, 5 B. & C. 820 (as to special conditions of the grant; *e.g.*, the order of the Court); *Birmingham* v. *Lloyd*, 18 Ves. 515; but see Rivers Pollution Prevention Act. 39 & 40 Vict. c. 75.

(*u*) *Westminster, etc., Co.* v. *Clayton*, 36 L. J. Ch. 476; *Rylands* v. *Fletcher*, L. R. 3 H. L. 341; *Baird* v. *Williamson*, 15 C. B. (N.S.) 376; but see *Smith & Kenrick*, 7 C. B. 515; *Crompton* v. *Lea*, L. R. 19 Eq. 127.

(*x*) *John Young & Co.* v. *Bankier Distillery*, [1893] A. C. 691.

(2) *Rights for underground airways, shaftings, underground wayleaves*, were granted in the above cases and also in the case of *Re Nunnery Colliery Co.'s Application, supra.*

(3) *The right to remove the surface by quarrying* was granted in *Calstock Rural District Council against the Cornwall County Council and Others*, Bamber's Mining Cases, Vol. I, p. 79.

(4) *Rights over surface lands for user of sidings and similar rights* were granted in : *J. C. Jenkins & Co., Ltd., against Lancaster's Steam Collieries, Ltd.*, Bamber's Mining Cases, Vol. I, p. 100; *Re Llwynffynom Colliery Co., Ltd.*, unreported, Order November 30, 1926; *Re Robert Heath & Low Moor, Ltd.*, unreported, Order July 8, 1925; *Re Llay Main Colliery Co.*, unreported, Order July 28, 1926.

(5) *Rights to erect aerial ropeways over other persons' lands* were granted in : *Re Henshaw & Barcomber Colliery Co., Ltd.*, unreported, Order February 22, 1927; *Re Tilmanstone Kent Collieries, Ltd.*, see *supra.*

(6) *Rights relating to the user of water and to make ditches* were granted in *Re Llay Main Colliery Co.*, see *spura.*

(7) *Rights to erect, maintain and carry on coke ovens by-product plant upon the surface* were granted in *Re Haslegrave and Belton Colliery Co.*, see *supra.*

(8) *Right to construct an electric cable over lands* was granted in *Re Llay Main Colliery Co.*, see *supra.* A similar right was asked for in *Re Houghton Main Colliery Co., Ltd.* (Order, May 1, 1928), unreported. An agreement was entered into between the parties which was scheduled to the Order.

The above cases are set out as examples of the rights which the Court are prepared to grant, but they are by no means exhaustive.

[7] See note to section 3, sub-section 1, *supra*, p. 11.

Generally.

The various ancillary rights set out in this section are by no means exhaustive. This section is somewhat of a saving section and an application that cannot be brought directly under any other section of the Act could probably be drawn to fall within this section.

The question of the Court reviewing existing leases, conveyances, agreements, licences, grants and other documents of title, where the conditions are such that the proper workings of minerals are adversely affected by the terms and conditions of these documents and a compliance therewith, has been discussed, but it would appear that an application on these grounds can be supported and the Court has jurisdiction under this section to consider any such application. As already stated in the case of applications for this relief in connection with colliery documents, the Mining Industry Act, 1926, s. 13, sub-s. 2, gives the Court absolute jurisdiction to grant this relief if it is in the national interest. The fact that there is direct jurisdiction given to the Court under section 13, sub-section 2 of the Mining Industry Act, 1926, in connection with documents affecting the working of coal does not in any way lessen the jurisdiction (if it exists) given to the Court by the section under consideration.

This section is quite distinct and separate from section 1, and applications can be made thereunder when no application is made for a right of working minerals. There will no doubt be many instances in which an application is made under both sections; the question whether any application directly or indirectly will result in the grant of working of minerals should be carefully considered before the application is prepared.

Limitation on power of granting rights.

4.—(1) Neither the right to work minerals nor an ancillary right shall be granted under this Act unless it is shown that it is not reasonably practicable to obtain the right in question by private arrangement for any of the following reasons :

(a) that the persons with power to grant the right are numerous or have conflicting interests;

(b) that the persons with power to grant the right, or any of them, cannot be ascertained or cannot be found;

(c) that the persons from whom the right must be obtained, or any of them, have not the necessary powers of disposition, whether by reason of defect in title, legal disability or otherwise;

(d) that the person with power to grant the right unreasonably refuses to grant it or demands terms which, having regard to the circumstances, are unreasonable.[1]

(2) For the purposes of this Part of this Act, a person whose concurrence is necessary for the exercise of a right to work minerals shall be deemed to be a person having power to grant the right, or a person from whom the right must be obtained, as the case may be.[2]

It is arguable whether it is now necessary in the case of applications under section 13 of the Mining Industry Act, 1926, to comply with these conditions. This section enacts that "any person" may apply, but as sub-section 6 provides that this part of the Act shall be construed as one with the "Principal Act," it is questionable whether this incorporates these conditions or not.

It is advisable in all cases where the right cannot be obtained for the reasons set out in section 4 to state in the application that this is the reason for making the application. It is, however, possible that circumstances may arise in which the application is made on grounds other than those referred to in section 6. In such a case it may be argued that as section 4 is not relevant to such a case, section 13, sub-section 1, should be construed as though the words "any person" are alone sufficient to give the applicant a right to apply; and further, that as section 4 is not relevant, there is no other condition precedent to be complied with before an application can be presented to the tribunal by the Board of Trade. Section 2, *ante*, p. 9, has no reference to section 4.

[1] This section is a limitation on the conditions under which applications can be made. These conditions were very necessary to prevent unnecessary or vexatious applications coming before the Court.

The limitation applies both to applications to work minerals and ancillary rights, but no reference is made to the question of adjustment of boundaries under section 2, and presumably such applications are not affected by this section.

What is "reasonably practicable" is a question of fact for the Court to determine.

It is difficult to say what will amount to "reasonably practicable." The Commission will take all the facts of the case into consideration. The applicants must prove that "it is not reasonably practicable" for any of the reasons in the sub-section. Four reasons are given in this section, and they are all governed by the word "reasonable." Providing the applicants have made reasonable offers of compensation in case of damage by subsidence or for any other ancillary right, and a proper price according to the locality for the value of the minerals, they would presumably be considered to have behaved reasonably. It may here be mentioned that the Court will not sanction an agreement entered into between rival applicants to work minerals in an area over which separate applications have been filed by these applicants, to divide the area between them on certain terms and conditions agreed behind the

back of the Court, unless such an agreement is in the national interest (*y*). If the agreement is sanctioned in principle, the Court may specify certain terms or conditions which the opposing applicants must modify before the Court's sanction is obtained thereto. Orders by consent are not looked upon with favour by the tribunal.

A refusal which is unreasonable may result in the objectors being mulcted in costs occasioned by such unreasonable refusal. The case cited below is in point (*z*).

Private arrangement.

If one of several persons whose consent is necessary for the grant of any right refuses to agree, this would be such a refusal as to bring the case within the operation of the Act.

Everyone affected must be *ad idem* to enable the question in dispute to be arranged privately.

(a) This would mean that any one of the persons with power to grant the right will not or may not concur, or whose interest is or may be conflicting. The consent of the majority would not appear to be sufficient to exclude the application of this section.

(b) The words "any of them" should apparently be interpreted as "any one of them." The absence of one person from the proceedings would be sufficient.

(c) Again the words "any of them" should be interpreted as "any one of them." This would include infancy, lunacy, and similar disabilities.

In the case of a grant by a public authority, corporation or company which might be *ultra vires*, the company would be under such a legal disability as to bring the case within the section.

The grant, being a statutory grant, would be binding on all parties, but the legal defect, although not cured, will for all practical purposes have disappeared—see sections 11 and 12, *post*.

[2] It is submitted that all those persons who come within this sub-section are persons who have a right to be heard by way of objection before the Railway and Canal Commission Court, but not of necessity a right to oppose the application, and in certain cases leave has been refused.

"A person whose concurrence is necessary."

It has been decided that in the case of land that has been of copyhold tenure and has been enfranchised, and also in the case of common land, the lord of the manor and the copyholders come within the provisions of this sub-section (*a*). Where the minerals or part of them lie under a public highway, the presumption is that everything below the surface belongs to the owner of the adjoining land up to the centre of the road. There is a presumption that the surface of the road only has been dedicated to the public, and the original owner or the person standing in his place can exercise all rights of ownership not inconsistent with the rights of the public.

Applications for rights.

5.—(1) Any person *having an interest in any minerals* who is desirous of working, either by himself or through a lessee, *those minerals, or any adjacent minerals*, and who considers that the circumstances are such that a right to work the minerals can be granted under this Part of this Act, may send to the Board of Trade an application for the grant of such a right.[1]

(*y*) *Re New Hucknall Colliery Co., ante, Re Llwyffynom Colliery Co., Ltd., ante.*

(*z*) See *Re Charlesworth (J. & J.) Ltd., and Briggs (Henry), Sons & Co., Ltd.*, (1926), 43 T. L. R. 100.

(*a*) See *Re Markham Main Colliery Co., Ltd.* (1925), 41 T. L. R. 672.

(2) Any person having a right to work any minerals or applying for such a right who, for the purpose of or in connection with working those minerals either by himself or through a lessee, is desirous of obtaining an ancillary right, and who considers that the circumstances are such that such an ancillary right can be granted under this Part of this Act, may send to the Board of Trade an application for the grant of such a right.[2]

(3) An application under this section shall set forth the circumstances alleged to justify the grant of the right, and shall be in such form, and accompanied by such information verified in such manner, as the Board may direct.[3]

(4) The Board shall consider the application, and shall, unless after communication with such parties interested (if any) as they may think fit, they are of opinion that a prima facie case is not made out, refer the matter to the Railway and Canal Commission :

Provided that, where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition, or having unreasonably refused to grant it, or having demanded terms which are unreasonable, the Board shall not so refer the application to the Commission without first having communicated with that person.[4]

(5) When the application relates to a right to obtain a supply of water, or a right to dispose of water or other liquid matter, or any other right which appears to the Board of Trade to affect any local authority, the Board before referring the application to the Commission shall send a copy thereof to the local authority in order to enable them to take such steps as they think fit for placing their views before the Commission.[5]

The words in italics no longer apply to applications in connection with the working of coal. This section has been extended by section 13 of the Mining Industry Act, 1926. Any person can now apply under that statute for a right to search for or work coal, either by himself or through a lessee. The original conditions still apply in the case of applications for working any other minerals or mineral substances. See section 1 (*supra*).

[1] It does not appear that this sub-section applies to any application for an adjustment of boundaries, under section 2, an application apparently can be made direct to the Court.

This section refers only to Part I of the Act, in the case of minerals or mineral substances other than coal.

The Board of Trade is the department which has a statutory duty to examine and consider all applications for a right to work minerals or for any ancillary right. It does not, however, appear to exercise any judicial discretion over the merits of those applications. In the case of an application for an adjustment of boundaries under section 2, the application can apparently be made direct to the Court without first referring it to the Board of Trade.

The right referred to is the right to work minerals. The application for the grant of the rights asked for is sent to the Board of Trade, and approved by that department. The hearing of the application is before the Railway and Canal Commission Court in open Court.

[2] This sub-section refers to an application for the grant of an ancillary right only. If the grant of the ancillary right is in addition to an application for a grant of right to work minerals, an application should be made under sub-sections 1 and 2.

In cases where an application is made for the searching for or working of coal under the provisions of section 13 of the Mining Industry Act, 1926, sub-section 1, an applicant must also apply for any ancillary rights he may require in order to exercise the rights of working by applying under sub-section 3 of that section.

The position of the Board of Trade in considering any application is the same as it is under sub-section 1.

[3] This applies to an application under both sub-sections of section 5. The application should contain the fullest possible statement of facts. A form of application is set out in the Appendix, No. 8. The Board of Trade require three copies of a plan showing fully the area in connection with which an application is made for the working of minerals or for the grant of an ancillary right.

The words "verified in such a manner" suggest that the Board of Trade would be justified in demanding an affidavit of any facts they considered to be necessary.

[4] The words "shall" imply a statutory duty on the Board of Trade to carry out the administration of all necessary preliminary steps under the Act, but apparently not to exercise any judicial duties thereunder.

The words "*prima facie*" refer to and include:—

(a) In the case of an application for working minerals the conditions set out in section 1.

(b) In the case of an application for an ancillary right the conditions set out in section 3 and the limitations on the right of making an application referred to in section 4.

It is submitted that the statutory duty of the Board of Trade under this section is limited. They are only to exercise their powers in accordance with sub-section 4. It is submitted that there is a *prima facie* case within this section when a case appears to come within the Act and is of such a character that an answer to it is required from possible objectors. The application could not under these circumstances be properly refused by the Board of Trade.

It is further submitted that this section gives the Board of Trade the barest of judicial duties, if any. They cannot decide on the merits of the applicant's case nor on any points of law raised by the application. It is submitted that their duty is simply confined to considering all the facts of the case and exercising a discretion limited by the test given above. It is for the Commission to hear both sides of the case with witnesses and to adjudicate on the merits or demerits of the application.

It would appear that they cannot apply to persons whose rights or privileges may be affected by the application for any particulars in opposition to the application, and if they arrived at a decision on receipt of any such information this would be *ultra vires* their powers and duties. Their inquiries would presumably only be directed to matters which would support the application, as distinct from inquiry into matters which are controversial, and possibly opposed to the applicant's claims. In other words, the inquiry by the Board of Trade should be directed to the question whether it appears from the application as presented to the Board of Trade that the requirements of section 4 appear to have been complied with by the applicants.

The proviso to sub-section 4 gives the Board of Trade a statutory duty to communicate with any person who has refused to grant the applicants the rights they ask for, on account of the conditions precedent set out in section 4. The Board of Trade cannot, however, adjudicate or arbitrate on the question whether the objections to the application brought forward in accordance with the provisions of section 4 are sufficient or otherwise. This is also a matter for the Court.

It is a matter of interest whether a mandamus at the suit of any applicant would lie to a Divisional Court against the ruling of the Board of Trade if it attempted to exercise powers in excess of its jurisdiction, for instance if the Board of Trade decided on the facts in issue that the applicants had not made out a case and on these grounds refused to send a case to the Railway and Canal Commission when asked to do so by the applicants. In the case of *The Tilmanstone (Kent) Collieries, Ltd.* v. *Rice and others* (unreported, July 25, 1929), an *ex parte* application was made to the Court of the Railway and Canal Commission to expedite the reference of a case by the Board of Trade to the Court. It was admitted that the Court had no jurisdiction to make any order against the Board of Trade calling upon them to forward the application, and MacKinnon, J., expressed certain views as to the exercise by the Board of Trade of their powers under the Act, and his judgment is set out in full at p. 39, *post*.

Of course, this expression of opinion is "*obiter*," although it is a valuable guide on a question of some difficulty.

It is for the Court to determine the merits of a case, and the Court can always mulct the applicant in costs if the application is one which, in their opinion, should not have been put forward.

It is a matter for consideration whether, on a strict interpretation of this sub-section, the Court can dismiss an application for non-joinder of parties after the Board of Trade have passed the matter on to the Railway and Canal Commission Court as a *prima facie* case, after communicating with the persons affected, in accordance with the requirements of the Act, although this might affect the question of costs payable by the applicants, if their application on trial could not be supported on the facts adduced in support of their application.

"Any person" would include any company, public authority or body who may have the power to grant the right vested in them in accordance with section 4.

[5] Right to obtain a supply of water, or a right to dispose of water or other liquid matter.

This provision is to enable a public authority to appear at the hearing of an application in order to protect themselves. They would under this section have a *locus standi* to be heard on any such application (but see section 6, sub-section 4, and section 13, *post*, and notes thereon, which appears to be in direct conflict with this sub-section). But it is submitted that this latter section does not authorise them to oppose an application.

Whenever a local authority or any statutory body or bodies having the control of water undertakings (including canals) are adversely affected by an application, they would have a *locus standi* under this sub-section to appear in opposition to and to be heard on an application. Reference should be made to section 3, sub-section 2 (e), and the statutes therein referred to.

Or any other right.

This would presumably refer to any other "ancillary right." It is a question for determination whether a local authority would have a *locus standi* to be heard under this section after receiving a communication from the Board of Trade in opposition to an application for a right to work minerals, where no letting down of the surface is applied for and the method of working is such that danger from subsidence will not in all probability result from the mining operations. It is a question of fact how far in every case mining operations will result in damage to the surface. Cases have been presented in which it has been suggested that no damage will result from working on (1) the half-and-half system; and (2) the checkaboard system. The letting down of the surface being an ancillary right, the right of working minerals "*per se*" is not an ancillary right—see section 13, *post*.

References to Railway and Canal Commission.

6.—(1) Where a matter is so referred to the Commission, the Commission, if satisfied that the requirements of this Part of this Act are complied with in the case of the applicant, and that it is expedient in the national interest that the right applied for should be granted to him, may, by order, grant the right on such terms and subject to such conditions, and for such period, as the Commission may think fit, and upon such an order being made, the right specified in the order shall, subject to the provisions hereinafter contained, vest in the applicant.[1]

(2) Where such a right is granted, such compensation or consideration as in default of agreement may be determined by the Commission shall be paid or given by the applicant in respect of the acquisition of the right to such persons as the Commission may determine to be entitled thereto.[2]

(3) In determining the duration of any right to be granted the Commission shall have regard to the time reasonably necessary to enable the minerals to be fully worked, and where the applicant's interest in any minerals *in virtue of which he is entitled to make the application* is an interest as lessee, shall have regard to the duration of such interest.[3]

(4) Where the right applied for is a right to let down the surface, the Commission in determining whether the right should be granted [4]—

(a) shall have regard to the value of the minerals required for the support of any works or buildings or intended works or buildings on or below the surface as compared with the value of the buildings or works, and as to whether the support of the buildings or works or intended works or buildings is in the national interest more important than the working of those minerals [4]; or

(b) if there are no such buildings or works, shall have regard to the extent to which the use of the surface for the purposes for which it is used or is intended to be used will be prejudicially affected by subsidence, and as to whether the support of the surface is in the national interest more important than the working of the minerals required for the support thereof.[4]

(5) In determining whether any right should be granted or the conditions upon which any such right should be granted the Commission shall have regard to all the circumstances of the case, and in particular to the extent to which the retention of any minerals is required for the protection of any mines or other works from flooding, or for any other mining purpose, and (so far as relevant) to the royalties, covenants, and conditions

reserved by or contained in the applicant's existing mining lease or leases (if any), or customary in mining leases in the district.[5]

[1] The Commission—namely, the Railway and Canal Commission.

The Commission have a statutory duty under section 6, sub-section 1, to inquire whether all the requirements of the Act have been complied with—namely, that the Board of Trade have carried out their statutory duties under section 5, in the case of applications under section 1, for the grant of a right to work minerals, and under section 3 for the grant of an ancillary right; and that the proper persons have been communicated with. They have also to inquire whether the applicants have satisfied the Board of Trade as to their right to apply, in other words, their *locus*, and that the applicants cannot obtain the required right by private arrangement for the reasons set out in section 4. It will be appreciated that as the Commission have those duties on a case referred, they would probably have jurisdiction to determine under section 10, sub-section 2, whether any application should have been referred by the Board of Trade, apart from any mandamus proceedings.

National Interest.

The whole Act is based on the fact that the rights asked for should be granted in the national interest. The requirements and private interests of the applicant do not really concern the Court at all. National interest is the keynote to the whole of this legislation and the question of national interest has received the most careful consideration from the Court in cases of applications made to the Court for the grant of rights of working or ancillary rights.

Certain principles have now arisen from the decisions in these cases which may be stated as follows :

(1) That the scope of national interest under this legislation is unlimited, but each case must be determined upon the facts presented to the Court in support of the application.

(2) That parties before the Court in a pending application, or in an application which is under consideration, must obtain the Court's consent to any proposed terms of settlement. Such terms may not be acceptable to the Court in the Court's judicial position as the judges of national interest, and may require amendment (*b*).

(3) The question of economics in the industry is a proper question for consideration by the Court (*c*).

(4) The question of the value of the minerals to be won must be compared with the value of the surface and works thereon, and probable damage thereto by subsidence (*d*) arising from working the minerals.

(5) The following points always receive careful consideration by the Court in making any grant to an applicant, apart from the general rights of objectors :—

(1) Increased output of minerals.
(2) Increased employment.
(3) Possible unemployment.
(4) Safety in working.
(5) Efficiency in working.
(6) Economy in working.
(7) Markets for minerals.

And in certain cases :—

(8) Effect on local rates.
(9) Means of communication by railways, roadways and canals.
(10) Indirect, as well as direct, employment.

The Court has laid down the following principle in granting the rights

(*b*) See *Nunnery Colliery Co.'s Application, ante; Re Charlesworth (J. & J.) Ltd., and Briggs (Henry) Sons & Co., Ltd., ante.*

(*c*) See *Re Tilmanstone (Kent) Collieries, Ltd., ante, Re Burnyeat, Brown & Co., ante.*

(*d*) *Re Manners Colliery Co., Ltd.* (1926), 42 T. L. R. 773.

asked for by applicants as being essentially outside the meaning of " national interest " as comprehended by the Court. *Per* Salter, J. : " In my opinion, it is not in the national interest that a person who has just set his hand to a solemn covenant should come to this Court, with the ink hardly dry, and obtain release from it, while retaining all the benefits for which the covenant was a consideration " (*e*).

National interest is concerned with (a) the working of minerals; (b) the granting of rights which will facilitate the working of minerals; but apparently the question of national interest does not apply to applications made under section 2.

The Court has full jurisdiction to make such an order, and on such terms and subject to such restrictions as it may consider necessary in the national interest, on applicants who apply under sections other than section 2.

The Court is the final tribunal on all questions of fact and on all questions of costs. An appeal lies to the Court of Appeal on all questions of law.

The period for which any right is granted will probably be such as in the opinion of the Court is reasonably necessary for the minerals to be properly worked out. On the grants of an ancillary right, the period for which the right is granted would probably be based, either on the term required for the working out of the minerals affected by the order, or the residue of the term of the existing lease or leases of the applicant. The tribunal would probably sanction an application for a grant " *in futuro* " if it was satisfied that such a grant was necessary in the national interest, and that the grant would result in immediate expenditure in works and employment of labour, and that by the withholding of a grant the future progress of an undertaking would be unduly hampered.

It is doubtful if any grant in perpetuity would be made by the Court.

Vest in the applicant.

The applicant would under this section have a good statutory title, but as it is granted by the Court, so it can be varied or annulled by the Court, and it is to that extent not final. At the same time, the Court would only vary their order for very grave reasons—and see sections 11 and 12, *post*.

2 Compensation or consideration.

These words imply a money payment for the right granted. The Court is the sole judge of what is a proper payment in any particular case. The evidence on which such payment would be arrived at would consist of the usual terms of remuneration or payment, whether by way of lease, grant, or purchase for the particular right asked for and usual in the district affected by the application.

On an application for exchange of mineral areas by two opposing parties, it is presumed that the Court in making any order as to exchange of areas could likewise order a payment of a sum of money by way of compensation to any parties who might prove to the satisfaction of the Court that they would be adversely affected by the exchange. It is in the national interest to exchange areas of minerals between one owner and another if the result of the exchange is that the minerals will be more economically worked (*f*).

The Court will consider the comparative values (a) of surface works and damage by subsidence, with (b) the value of minerals to be won; and weigh these two values in the judicial scale in the national interest (*g*).

Evidence should be available on an application for working minerals, as to the rates, whether by way of lease or purchase, usually paid for similar minerals in the particular locality.

(*e*) *Re Dexaby & Cadeby Main Collieries, Ltd.* (Order March 27, 1929, unreported).

(*f*) See the judgment of Sankey, J., in *Re Burnyeat, Brown & Co., Ltd.* (unreported, Order July 27, 1925).

(*g*) See *Re Manners Colliery Co., Ltd., ante*.

In the case of ancillary rights, reservation in leases of surface rents would be of assistance in this particular direction in assisting the Court to come to a decision. Expert evidence should also be available as to the purchase price of land in the locality affected, and its rateable value.

It must be remembered that usually the sum set out in the lease is the sum payable by way of an acreage payment for surface occupation on the expiration of the term of the lease.

The present value of this figure would presumably be arrived at by estimating it on a 5 per cent. table.

In default of agreement.

These words allow the applicants or objectors to arrive at a settlement even when the matter is before the Court and during the hearing of the application, but subject to the sanction of the Court thereto.

The Commission have an absolute discretion as to persons to whom any compensation or other payment shall be made.

The word "compensation" gives the Court the power at any time to determine what payment shall be made for compensation for damage which may have occurred to any person, whether previously before the Court or not, arising out of the exercise by the applicants of any right previously applied for and granted to them. Such an application for compensation could be heard and determined by the Court many years after an order had been made by the Court, under an application for a grant to work.

Any order under an application for the grant of a right to work would include the payment by the applicants of compensation for damage occasioned by the exercise of the grant. The Court are therefore the sole tribunal with powers to determine the sum payable thereunder.

[3] The words in italics have been deleted in cases of application for the working and winning of coal in pursuance of the provisions of section 13, sub-section 4, of the Mining Industry Act, 1926.

The duration of the right.

As previously stated, the Court have full discretion in this connection, and of course will be guided by the evidence produced at the hearing of the application as to the time required to work out those minerals.

The duration of such interest.

This apparently refers to the unexpired term of the lease or grant.

[4] This sub-section only applies in the case of an application to let down the surface and therefore only applications under section 3, asking for the ancillary right of letting down, are affected thereby. It is, however, advisable to ask for this right in every application to work.

(a) The Court have a statutory duty, on any application for letting down the surface, to consider the value of the works and buildings on the surface, in order to determine whether the value of the minerals is greater than the value of the buildings or works in their existing state. It is obvious that there are many cases of works and buildings which, from their nature and historical interest, are such that their value cannot be estimated in terms of money, and in these cases presumably no order would be made, or such means as may be necessary to safeguard the buildings would have to be carefully considered and fully set out in any order granted on any such application. An application need not of necessity be refused where it is shown that a pillar of coal will afford ample support.

(b) This sub-section anticipates applications where drainage or water systems, canals, railways, roads, or other public utility works or undertakings may be adversely affected by subsidence.

The Court would consider the question of comparative values in every such application, but in the majority of these applications the property affected is

such that a payment by way of compensation will meet the case, and any works or buildings which require special measures to be taken for their support could be duly protected by leaving a pillar of sufficient size by way of support, both vertical and lateral. All necessary precautions can therefore be taken in any order made to protect surface buildings which in the national interest require protection.

On a strict interpretation of this sub-section it is suggested that if no application is made to let down the surface, the Court cannot hear any objectors to an application for the grant of a right to work minerals on the grounds that they have no *locus standi* to be heard. (See section 5, sub-section 5, and section 13.)

Special consideration should be given to section 13 and the last three lines of that section "or shall confer . . . . working of minerals." These words would appear to limit the right of a public authority to oppose the working of minerals if no damage to or letting down of the surface will result therefrom. Section 6, sub-section 4 (b), applies to the roads, canals and other undertakings of public bodies and authorities where a letting down of the surface is contemplated. It is submitted that section 13 in so many words authorises public authorities to oppose any application which will affect their right to support if it has been acquired under the code, but not otherwise. Their only *locus standi* to object under that section would appear to be on the basis of possible loss of support. In section 6, sub-section 4 (b) the word "subsidence" is referred to as the prejudice which will affect the surface. This is in support of the suggestion that loss of support for the undertakings of public authorities is the only issue on which such bodies would have a *locus* to be heard by the Court in opposition to any application to which they may be joined as objectors. Section 5, sub-section 5 does not authorise a local authority to oppose an application. It is limited to "placing their views before the Commission." (See notes to section 5, sub-section 5.) It must, however, be remembered that where it is obvious on the facts in evidence before the Commission that the possibility of future damage of a serious nature is likely to arise from the working of the minerals the Commission would hesitate before making an order and in any event would introduce strong protective and compensation terms into any order they might make. An example of this class of application is one where the working of coal under a canal, owing to the proximity of the seams to the surface, may result in the waters of the canal being drained into the colliery workings (*h*).

[5] All the circumstances of the case.

The Court's inquiries may be unlimited in extent. Any fact which may be of assistance to the members of the Court at arriving at a decision should be placed before them, and it is questionable whether any objection could be taken to such facts or the method of placing them before the Court on the grounds that they are not evidence.

Flooding.

In the case of mines this difficulty would be overcome by leaving sufficiently wide barriers at danger spots, faults, and against old workings. In other cases any application might be refused (see notes *supra* on this subject).

Royalties, covenants and conditions.

The existing leases or conveyances of the applicant are the best guide to the Court as to what is a fair and usual rate of payment by way of remuneration for minerals in any particular locality in the form of royalty payments or rental, and whether this is based on a tonnage, acreage, footage, or other rate, or by way of purchase in fee simple.

(*h*) See *Re Manners Colliery Co., Ltd., ante.*

Customary in mining leases in the district.

If the applicants are owners in fee simple of the minerals and for this or any other reason leases or other grants or licences are not available to guide the Court as to the usual rental or royalty payment in a district, expert evidence should be available so as to assist the Court in arriving at a proper decision as to the compensation payable by way of rent or royalty for any minerals worked under an order of the Court or for the grant of any ancillary right in connection therewith.

Provisions where several applications in respect of the same rights.

7.—(1) Where separate applications are made by two or more persons for the right to work the same minerals and are referred to the Commission, the Commission, in addition to the matters aforesaid, shall determine which, if any, of the applicants is to be preferred, or whether the right to work one part of the minerals should be granted to one applicant and the right to work another part should be granted to another applicant; and in arriving at their determination the Commission shall have regard to the question as to how the minerals can be most conveniently worked, to the respective rights of the applicants in the surface or adjacent minerals, and generally to all the circumstances of the case.[1]

(2) This section shall apply to cases of applications by two or more persons for the same ancillary right subject to the necessary modifications, and in particular subject to this modification, that the right may be granted to the applicants, or to any two or more of them, jointly.[2]

[1] **Separate applications.**

These applications would presumably be joined as one cause after the summons for directions has been heard and treated thereafter as one cause for all the purposes of the hearing, and it is suggested that the applicant senior in point of time would be considered the applicant, the other applicant becoming respondent to the cause. Cases have arisen in which applications are made by rival collieries for working all or part of the same areas or seams of coal or for joint or exclusive user of surface or underground facilities. The Court will not sanction any arrangement for the division of such areas or facilities agreed upon by the rival applicants themselves, unless the Court are satisfied that such an arrangement is in the national interest (*i*).

The same minerals.

This would obviously apply to the same seam or seams, or minerals within the same surface area. Applications to work separate seams by different applicants lying under the same surface area would presumably not come within the provisions section, although it would be convenient to hear and determine these applications together both on the grounds of economy and also for the reason that the question of surface damage would probably be germane to both applications.

To be preferred.

The Court can refuse the application of any one of the applicants; the words "if any" undoubtedly give the Court the right to refuse both applications.

(*i*) See *Re Nunnery Colliery Co.'s Application, J. C. Jenkins & Co., Ltd.* v. *Lancaster's Steam Collieries, Ltd.*; *Re J. & J. Charlesworth, Ltd., and Briggs, Ltd., ante.*

The right to work one part———another applicant.

These words would empower the Court to grant working facilities in the same seam to different applicants, provided that proper provisions are made to protect the lessor's interest and that of each of the applicants.

Conveniently worked.

Presumably this refers to convenience from the point of view of commercial convenience, whether one applicant, from the existing position of his workings and general facilities, can work the minerals more economically in the national interest. The question of damage from the workings would be a matter for consideration on the grounds of commercial convenience.

It is a question for decision whether this section would or would not empower an owner of all the minerals in fee simple in any one seam to be preferred to another applicant whose interest was only that of an adjacent mineral owner but who could work the seam more conveniently in point of time than the fee simple owner. The same argument would likewise apply to an applicant who was not an adjacent mineral owner, but was the lessee of the seam the subject of the application. Would he be preferred to an adjacent owner who could work the seam immediately, but who was only interested therein as the owner of adjacent minerals, if the actual lessee could only work the seam after a period of many years? The adjacent owner would, presumably, be ordered to pay proper compensation to the rightful lessee. Under section 13 of the Mining Industry Act, 1926, any person has a *locus standi* to apply for the right of working any area of coal.

Generally———case.

The two applicants might be ordered to work the seams or area jointly as joint tenants or tenants in common.

If one of the applicants was owner of part of the seam in fee simple, and the other applicant is lessee of the other part, one of the applicants might be preferred to the other. Especially would this be so if one applicant could work the coal more conveniently in point of time than the other. In the national interest this would probably be beneficial.

Mining Industry Act, 1926.

All applications under section 7 should also contain an application under section 13, sub-section 1 of the Mining Industry Act, 1926, for the right to work minerals. The danger of the minerals being left permanently unworked under section 1 of the principal Act, namely, the pillars and boundaries requisite in the same seam or area of minerals for the protection of two persons with conflicting interests having the legal right to work such minerals does not now arise as the application is governed by the Mining Industry Act, 1926. The words " in particular . . . jointly " in sub-section 2, suggest that two applicants whose interests were adverse would not be granted a joint right to work the same seam of coal. It would not be convenient to grant such a right although an application would lie.

[2] The previous remarks apply to a certain extent to rights which may be granted under this sub-section.

Joint Working Rights.

It is submitted that these words definitely determine the intention of the Legislature that, in the discretion of the Court, two applicants may be granted joint working rights within the same seam or area of minerals.

Restrictions on working minerals required for support.

8.—(1) If any person having an interest in any land is not entitled to support or sufficient support, whether vertical or lateral, for any buildings or works, whether on or below the surface, erected or constructed, or intended to be erected or

constructed, on or below the surface, and alleges that it is not reasonably practicable to obtain a right to such support by private arrangement for any of the reasons mentioned in section four of this Act, he may send to the Board of Trade an application that such restrictions may be imposed on the working of the minerals under that land and the land adjacent thereto as he may consider necessary to secure sufficient support to the buildings or works.[1]

(2) An application under this section shall set forth the circumstances alleged to justify the imposition of the restrictions, and shall be in such form, and accompanied by such information verified in such manner, as the Board may direct.[2]

(3) The Board shall consider the application, and shall, unless after communication with such other parties interested (if any) as they think fit, they are of opinion that a primâ facie case is not made out, refer the matter to the Railway and Canal Commission :

Provided that, where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition, or having unreasonably refused to grant it, or having demanded terms which are unreasonable, the Board shall not so refer the application to the Commission without first having communicated with that person.[3]

(4) Where any such case is referred to the Commission, the Commission, if satisfied that the requirements of this section are complied with in the case of the applicant, and that it is expedient in the national interest that restrictions should be imposed, may, by order, impose such restrictions, on such terms and subject to such conditions and for such period as the Commission may think just, and upon such order being made the right to enforce the restrictions imposed by the order shall, subject to the provisions hereinafter contained, vest in the applicant.[4]

(5) Where restrictions are imposed, such compensation or consideration as in default of agreement may be determined by the Commission shall be paid or given by the applicant in respect of the imposition of the restrictions to such persons as the Commission may determine to be entitled thereto.[5]

(6) The restrictions may be either on the quantity or position of the minerals to be worked, or on the methods of working or packing, or otherwise such as may be necessary to secure adequate support to the buildings or works or to prevent or minimise damage thereto.[6]

(7) In determining whether restrictions should be imposed the Commission shall have regard to the value of the buildings

or works or the cost of repairing damage likely to be caused thereto by subsidence, as compared with the value of the minerals, or to the importance in the national interest of the erection or preservation of the buildings or works, as compared with the importance in the national interest of the working of the minerals.[7]

(8) For the purposes of this section, where any building or work is an ancient monument within the meaning of the Ancient Monuments Consolidation and Amendment Act, 1913, and is, in pursuance of that Act, under the guardianship or protection of the Commissioners of Works, or is under the guardianship of a local authority, the Commissioners of Works or the local authority, as the case may be, shall be deemed to be persons entitled to make an application under this section.[8]

Restrictions on working Minerals required for Support.

[1] It is a matter for consideration how far the law of support is affected by the present statute. In considering this question it is again necessary to emphasise the fact that after severance the surface and the mines underlying the surface are separate entities, and the same remark applies to seams of coal or other minerals lying under the surface when these seams are in separate ownership. It must first of all be stated that the rule has been definitely laid down that fear of possible future damage to the surface from underground workings resulting in a present depreciation of the surface value gives no immediate cause of action (*k*).

Secondly, the subsidence must be substantial to support a cause of action, even though the damage may be inconsiderable (*l*).

Thirdly, the documents of title (including awards under the Inclosure Acts) must be looked at to ascertain the position of the parties. Speaking generally, when mines are excepted on a conveyance of the surface, or the grant of a lease, and the deed is silent on the question of support, the owner of the surface is entitled to support (*m*). The same principle applies as between overlying and underlying mines (*n*).

The law, however, with regard to wastes is somewhat different.

It must be remembered that the right to support is a right of land in its natural state as an incident of tenure, and that if it has been artificially affected either by the addition of works or buildings, or by the subtraction from the surface by excavation, then the right is only such as it would be entitled to in its natural state. If, however, the injury to the surface would have taken place even if the land was left in its natural state, the fact that there are buildings on it is no reason for disallowing claims for damage caused to the buildings by the failure to support the land (*o*).

Of course, the right to support may be definitely excluded or excluded by implication. It is therefore a question for careful consideration how far the words "is not entitled to support" in section 8, sub-section 1 of the Act would entitle an applicant who, by his own act or that of his predecessors in

(*k*) *West Leigh* v. *Tunnicliffe*, [1908] A. C. p. 29; *Lamb* v. *Walker*, 3 Q. B. D. 389.

(*l*) *Att.-Gen.* v. *Conduit Colliery*, [1895] 1 Q. B. p. 301; *New Sharlston* v. *Westmoreland*, 82 L. T. 725.

(*m*) *Goold* v. *G. W. Deep Coal Co.*, 12 L. T. (N.S.) 844.

(*n*) *Pountney* v. *Clayton*, 11 Q. B. D. 839; *Midland Railway* v. *Robinson*, 15 A. C. 27; but see *Butterley* v. *New Hucknall*, [1909] 1 Ch. 52.

(*o*) *Brown* v. *Robins*, 4 H. & N. 186; *Manchester Corporation* v. *New Moss*, [1906] 2 Ch. 564; *New Moss* v. *Manchester Corporation*, [1908] A. C. 117.

title, has definitely excluded the right to support, to apply to the Court and say: "This Act is an enabling statute, and although I have contracted in accordance with the law existing at the time of my agreement, licence, lease or conveyance, now I am entitled to come to you and ask you to exercise your judicial discretion in accordance with this section and grant me relief." The position is somewhat similar on an application for the grant of a right to support where the exclusion of the right is based on custom or prescription, whether the support required is that of land in its natural or artificial state.

It is submitted that as the Court has to exercise its discretion in the "national interest" in accordance with sub-sections 4 and 7, where the applicant has by his own act or that of his predecessors in title lost the right to support, only applications based on matters of national importance would be considered. Examples of such suggested applications would, so far as the surface is concerned, include: War Memorial Hospitals, Public Institutions and Buildings of National Importance such as Museums or Public Art Galleries. In this connection it is of interest to state that the fear of damage arising from mining works to "Hadrian's Wall" would enable the body who are the guardians of this ancient monument to apply to the Commission for a protective order in accordance with the provisions of this section as this building would fall within the definition of "ancient monument" contained in the Ancient Monuments Consolidation and Amendment Act, 1913. Section 22 is sufficiently wide to include an order protecting the monument, the adjoining surface and the amenities. It would be a question of fact how far these amenities extended.

So far as subjacent seams of minerals are concerned, as these are works below the surface, and as the limitations in sub-section 7 of the section only refer to the comparison of values of the buildings or works with that of minerals, the assumption to be drawn from the wording of this particular sub-section is that the comparison to be made is with works on the surface. It may be assumed and it is submitted that such subjacent minerals would come within the provision of sub-section 1 as to the right of "any person" to apply for "support," and the Court is not limited in its discretion by sub-section 7 with reference to the question of support for mineral workings only. At the same time, their discretion must be exercised in the national interest in accordance with sub-section 4. The Act is of importance in a case where a series of facts exist similar to those which arose in *Butterley* v. *New Hucknall Co.*, [1910] A. C. p. 393, and this case should be carefully considered in this direction. An owner of minerals lying above a subjacent seam might apply to the Court for an order to prevent the working of lower seams, even though the right to support had been contracted away as against the applicant. The answer would appear to be a counter application to work the minerals under the Mining Industry Act, 1926, s. 13, by the person entitled to work them, *e.g.*, the mineral lessee.

Any person.

This would include a corporation, company or body, and person or persons interested.

Interest in land.

These words would, it is submitted, include any interest in any minerals in or under any land. This would appear to be the intention of the section when the words "works on or below the surface" are considered in conjunction with the interest in land.

Vertical or lateral.

Any person who is in fear of injury being caused to his works or buildings owing to the working face of a colliery or other mineral undertaking advancing towards his works or buildings, and who is prejudiced by the want of support owing to subsidence, or the fear of subsidence, even although the subsidence is in advance of the face of the workings, would be entitled to apply under this

section to prevent the further working of minerals in the direction indicated (*p*). The word "vertical," taken in conjunction with the word "works," would presumably apply to any application by a colliery company or other worker in any seam of minerals for an order to prevent the worker on a lower level from letting down the top seam or seams on a higher level by their workings.

Of course, the actual success of such an application would largely depend on the terms of the leases of the various lessees in the area and the title of their predecessors in title and the mutual rights of different lessees where the seams lie one above the other (*q*). This section would presuppose an application by the owner of the surface or the lessees of upper seams of minerals to prevent another colliery lessee or other mineral worker from proceeding to carry on their proposed works in any area, where the company in the upper seams or the surface owner fears that workings in future in the lower seams will cause damage to the upper seams or the surface.

Private arrangement.

Section 4. Similar conditions under this section apply to any application for support.—See notes to section 4, *ante*, p. 15.

Board of Trade.

An application to the Board of Trade will be similar to an application for working minerals or ancillary rights. The Board of Trade have a discretion as to whether the application is, in their opinion, *prima facie*, and they can refuse an application on these grounds.—See section 5 and notes thereon as to appeal from the findings of the Board of Trade.

That land or land adjacent.

This presupposes the right of an applicant to apply for the prevention of damage even before the working face has approached an area where damage may result from the workings. Such an application would be similar in its result to injunction proceedings in the Chancery Division, but it is questionable if the result would be as speedy although it would probably be less expensive.

He may consider necessary.

These words are unusual and their effect cannot be safely estimated until proceedings have been taken under this section. What support is necessary in each particular case is a question of fact for the determination of the Commission.

Railways and Other Statutory Undertakings.

The position of railway companys and similar bodies who have acquired no right to support under the Consolidation Acts requires consideration. If no compensation has been paid for minerals within the forty yards limit referred to in sections 77-78 of the Railways Clauses Consolidation Act, 1845, as amended by Part II of the present Act, section 15, the owners or lessees of the minerals can work them without leaving support, although this may result in damage to the surface. Obviously, in such a case a railway company or similar statutory body would come within this section of the Act as having no right to support, but is it the intention of the Legislature to give such a company support on payment of proper compensation for loss to the worker of the minerals affected, and are the powers of the Commission sufficient to enable them to adjudicate in cases where a statutory company have not taken advantage of the code, and desire to remedy this defect? It is suggested that this is the effect of the Act (*r*). This question is altogether apart from the

(*p*) But see *West Leigh* v. *Tunnicliffe*, [1908] A. C. 29.
(*q*) *Butterley* v. *New Hucknall*, [1909] 1 Ch. 4; [1910] A. C. 389.
(*r*) *Great Western Ry. Co.* v. *Bennett*, L. R. 2 H. L. 27; *Lord Provost of Glasgow* v. *Farie*, 13 App. Cas. 657; *Midland Ry. Co.* v. *Robinson*, 15 App. Cas. 19.

question of lateral support from minerals lying outside the forty yards area, to which a statutory company is entitled by common law (*s*).

[2] In effect, this is a repetition of section 5, sub-section 3, and the notes thereon are equally applicable to this section.

[3] This sub-section is simply a repetition of section 5, sub-section 4, with the exception of the omission of the word " may " before " think " in the latter sub-section. It is not quite clear what effect, if any, the omission of this word may have on the context as a whole.—*See* section 5, sub-section 4, and the notes thereto.

There is no limitation to applications under this section similar to that contained in section 4, sub-section 1. This latter section only applies to grants of ancillary rights and the right to work minerals, and the direct negative requirements of the first part of section 4, sub-section 1, do not apply to applications for support. Section 4, sub-section 1, specifically states that " neither the right to work minerals nor an ancillary right shall be granted under this Act unless, etc." In the case of an application for support only the conditions which prevent an agreement by private arrangement are to be relied upon in support of the application, but there is no negative restriction on making any application for support to the Commission.

It is therefore submitted, even although the right could have been obtained by private arrangement on terms, any party can apply to the Court for an order, though the words " not reasonably practicable " in section 8, sub-section 1, would suggest that the whole question of the right of any applicant to apply depends on what is reasonable or not.

This would be in the form of an application similar in many respects to an application for working minerals or ancillary rights. It would, however, set out that the application is made by virtue of section 8 of the Act.

[4] It is a matter for determination whether this section of the Act gives an applicant a right to apply to the Court for the prevention of subsidence " *in futuro*," even though a right of action has not yet arisen in accordance with the rule laid down in *West Leigh* v. *Tunnicliffe*, [1908] A. C. p. 29.

This will in practice affect the position of parties under existing conveyances, leases and other written instruments, and the Court could presumably exercise its discretion in the national interest by amending such documents so as to give effect to its decisions, either directly or by the terms of the order.

In any case where an order will obviously result in the amendment of an existing document, it is suggested that any such necessary amendment should be included in the terms of the application.

[5] **Compensation or consideration.**

The grant of an order would depend on the Court being able to place the party adversely affected in such a position that he would not suffer appreciable damage by the grant, and that any such damage could be compensated for in damages. If the want of support of the applicant's lands or workings is due to his predecessor's want of title, the mineral owner or colliery proprietor might conceivably require heavy compensation to make up for his legal rights. The applicant, if he required stowage, might be ordered to pay for it.

Paid or given.

This would suggest that in the case of applications by one mineral worker against another for support of subjacent seams, the compensation, instead of being based on a money payment, might consist of the assignment by the applicant to the respondent of a similar mining interest in the applicant's own mineral area to make up for the loss sustained by the respondent consequent

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(*s*) *Howley Park Coal and Canal Co.* v. *London and North-Western Ry. Co.*, [1913] A. C. 11.

on the grant of the right applied for. This would certainly be compensation and could be pleaded in an application as suggested terms of compensation.

[6] **Quantity or position.**

The Court can order that the minerals be worked in a certain method and that pillars or barriers be left for support in accordance with the requirements suggested by the expert evidence put forward in each particular case.

Method of working or packing.

The Court can order stowage of any description before the seams or mineral areas affected by the applications are worked. It is submitted that under the Act, even parties to any agreement in writing or otherwise which provided for loss of support can subsequently come forward and demand a right to support; but it is submitted that unless the requirements are shown to be in the national interest, the application might be refused and in any case the applicants would be ordered to bear the cost of the stowage or compensate for loss entailed by retaining pillars being left in the workings.

Support to buildings or works.

No reference is made in this sub-section to any support other than that of works and buildings. When considered in conjunction with section 8, sub-section 1, it is a question whether this refers to works and buildings below the surface, in addition to those on the surface. The word "the" before works and buildings would, it is submitted, suggest that the adequate support refers to buildings or works on or below the surface, this being the description in sub-section 1. It is therefore submitted that coal seams which are actually being worked would be included in the definition "below the surface," in addition to such works as gas and water mains, sewerage, electric light underground cables, underground railways and tramways, canals and similar undertakings.

[7] This sub-section deals with the comparisons that the Court should make on inquiries as to determining or granting restrictions.

Value of minerals.

The computations of value would be primarily in terms of money, but the expression would also embrace the quality of the minerals to be won, and the indirect value of the minerals, namely, that by working them employment might be maintained and particular markets provided with necessary requirements.

Value of buildings.

It is submitted that when the latter part of this section and sub-section 8 are considered in conjunction with this section, the word "value" would not have the ordinary meaning attached to the word in terms of money, but the Commission would also consider the sentimental value of preserving works of national interest, such as ancient monuments scheduled under the Ancient Monuments Consolidation and Amendment Act, 1913. The comparative values are questions of fact to be determined by the Commission.

Damage by subsidence.

It is submitted that if the anticipated damage was very slight the Commission would not take judicial cognisance of it—on the rule *de minimis*. The anticipated damage would therefore have to be such as to require repairs. Under this sub-section even damage "*in futuro*" would appear to give rise to the right to make an application under the Act for the imposition of restrictions in working, but the point is not free from doubt (*t*).

(*t*) *Att.-Gen.* v. *Conduit Colliery*, [1895] 1 Q. B. 301, p. 313, *per* Collins, J.; *West Leigh* v. *Tunnicliffe*, [1908] A. C. p. 29.

Importance in National Interest of the erection and preservation of buildings or works.

This would include buildings or works which it is proposed to erect, and before erection the site would thereby be secured from subsidence, either vertical or lateral, and possible damage thereby prevented. In addition, existing buildings and works would be protected from anticipated damage.

Compared with———minerals.

This, again, is a question of national interest. What is best for the community: the preservation of a building housing a museum, or the working of a pillar of 1,000,000 tons of coal giving the building support?; or, again, the probable damage occasioned by working to buildings erected under a housing scheme, or the working of the coal? These are the types of questions which will arise under this sub-section.

It would appear that any damage suffered or likely to be suffered by an innocent party as the result of any such application being granted would have to be made good by the applicant. This would also apply to consequential damage. If a colliery company is prevented by an order of the Court from working coal which it has covenanted to work, the damages for breach of covenant by the lessee with the lessor would presumably have to be made good or guaranteed by the party applying for support. This would appear to be so even if the lessor was a party to the cause as an objector. The consequential damage for loss of profit by the colliery company would presumably also be a subject for assessment. Many other forms of consequential damage will conceivably arise and require adjudication by the Court.

8 Commissioners of Works.

The expression "the Commissioners of Works" in the Ancient Monuments Consolidation and Amendment Act, 1913, and in this Act refers to the Commissioners of His Majesty's Works and Public Buildings.

Guardianship or protection.

In pursuance of section 3, sub-section 5 of the Ancient Monuments Consolidation and Amendment Act, 1913, the actual owner of a monument would, it is submitted, have an equal right with the Commissioners or public authority to make an application.

This section refers only to the protection or guardianship of ancient monuments by the Commissioners of Works or by a public authority.

Owners of monument.

If the Commissioners or public authority are the actual owners of an ancient monument, of which they are also the protectors, it would appear that an application would be made under section 8, sub-section 1, and not under this sub-section.

Ancient monument.

For the definition of an "ancient monument" see section 22 of the Ancient Monuments Consolidation and Amendment Act, 1913.

General.

Provisions for compensation.

9.—(1) Where a right to work minerals or an ancillary right is granted or any restriction on the working of minerals is imposed under this Part of this Act, the Commission may determine the amount and nature of compensation or consideration to be paid or given and the persons to whom it is to be paid or given, either at the time when they determine whether the

right should be granted or the restrictions imposed or at any subsequent time.[1]

(2) The compensation or consideration in respect of any right, including a right to enforce restrictions, shall be assessed by the Commission on the basis of what would be fair and reasonable between a willing grantor and a willing grantee, having regard to the conditions subject to which the right is or is to be granted.[2]

(3) Where the person to whom any compensation or consideration is payable cannot be found or ascertained, the compensation or consideration shall be paid into court.[3]

(4) The Commission may impose as a condition on the grant of any right or the imposition of any restriction that any compensation or consideration payable in respect thereof shall be paid, or that security to the satisfaction of the Commission for the payment thereof shall be given, before the right is commenced to be exercised, or the restriction is enforced.[4]

[1] **Is imposed.**

This refers to the grant to an applicant of a right to work minerals or the grant of an ancillary right under section 6 or an order of restrictions on the workings of minerals required for support under section 8. Section 7 does not appear to come directly within this section.

Compensation.

As already stated, this may be a money payment, or some other method of compensation. The words "and nature" taken in conjunction with the words "or given" clearly point to the Court having this power, and the Court have expressed an opinion accordingly (*u*).

Any subsequent time.

The practice of the Court is to make an order, subject to its discretion to "amend or vary" the order if circumstances arise to make this step necessary. Under this sub-section the Court can at any time after an order is made reconsider the basis or amount of compensation, or add any necessary amendments or additions to any restrictions previously made by the Court, or rescind or vary any restrictions made in the original order. The procedure for varying any order would be by summons issued by the party asking for the amendment of the original order, and served on the applicant or other parties interested.

[2] This sub-section is one of considerable importance, and it is submitted that an application under this section could be made to vary the basis of compensation reserved by a deed entered into between two parties, whether the applicant was a party to the deed or not. For example :—

In the case of an applicant applying for ancillary surface rights to enable him to work minerals lying under land in which there has been a severance, the mineral area being adjacent to the area required for the ancillary surface rights. If the indenture of conveyance of the surface by the owner of the surface and minerals before severance gives the subjacent mineral owner the right to call upon the surface owner to grant him powers of working, getting or carrying away his (the subjacent mineral owner's) minerals and for the erection of necessary works in connection therewith, the compensation to be paid to the surface owner to be an amount agreed upon between them, or such as may be determined by arbitration on the reference to an arbitrator,

(*u*) See *Re Burnyeat Brown & Co., Ltd.* (unreported, Order, July 27, 1925), *ante*.

can the Court vary the terms agreed upon between the predecessors in title of the owner of the minerals and the surface? What is the position under this sub-section? Is the adjoining mineral owner, as well as the owner of the subjacent minerals, bound by the terms of the conveyance, and is the Court bound by its terms? It is submitted that on a strict interpretation of this sub-section the Court should award compensation on the basis of what would be fair and reasonable between a willing grantor and a willing grantee, and should base its award solely on the evidence placed before the Court. The words " having regard to the condition " would seem to indicate that this is the intention of the Legislature. *A fortiori* need the subjacent mineral owner be a party to the cause, if the application is made on behalf of an adjacent mineral owner to work adjacent minerals through the adjoining surface?

As the intention of the Act is largely to facilitate the working of minerals, any other construction of this sub-section would, it is submitted, place the Court in the position of arbitrators under a reservation in a deed, because, if the parties had agreed to terms, the matter would be settled privately, and the usual reservation in these cases is for any matters in dispute to be referred to arbitration. This surely is not the intention of the Legislature. If it were so, extravagant terms could be put forward by a respondent, and if terms were not agreed the matter would be referred to the Court, to arbitrate on the terms proposed by the respondent. The intention of the Act is, it is submitted, to give the Court facilities for awarding compensation which will not be extravagant or adverse to the mineral worker as against the mineral or surface owner, and not the terms demanded by a respondent under such a reservation.

The same argument applies to the case where one of the two parties to an indenture or agreement is an applicant. Even in that case it is submitted that on the question of the sum payable by way of compensation the Court is not bound by the deed in any way and should determine the issue solely on the wording of this sub-section, assisted by such evidence as is necessary.

The fact that the matter has been brought before the Court in order to determine the proper sum to be paid is in itself sufficient to show that the terms of compensation set out in a deed are such that the parties are not in the position of being " willing grantors or willing grantees," and a new basis of compensation should be discovered on which the Court would presumably base its findings and subsequent order.

This section is also of assistance in deciding new questions as to the relative position of parties under the Act, where variations of existing practice in the mining world are proposed as between owners of legal rights, whose rights are affected or diminished by the statute. An example of this is the question of the division of royalties between a lord of the manor and a copyholder where minerals are being worked under a statutory order. In a decision on the question of the mutual rights to compensation for working coal, it was decided that as the ownership of the minerals is vested in the lord of the manor and the possession is vested in the copyholders, that all the facts of the case will be taken into consideration in assessing the proper proportion of compensation payable to each vested interest by the persons granted the right to work. In the case under consideration, and on the particular facts of that case, it was decided that a fair and proper division was two-thirds to the lord of the manor and one-third to the copyholder. Further, in the absence of special custom, the consent of each vested interest is necessary to the working and carrying away of minerals under copyhold land (*x*).

3 It is the practice to provide for an ample period under the order for the ascertainment of such parties. A period of twelve months from the date of the order would in most cases be sufficient for this purpose. The consideration money would be taken out of Court on an application by summons by the

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(*x*) See *Re Markham Main Colliery, Ltd., ante.*

party entitled to the fund, the applicants or parties who paid the fund into Court being presumably the respondent to the application for payment out. See notes to the Mines (Working Facilities and Support) Act, 1925, *post*, p. 64.

[4] This power would presumably only be exercised in the discretion of the Court, and would not be a condition of every application. Many reasons can be suggested for the Court exercising this power: where the person to whom the money is to be paid will be badly damnified by the exercise of the right; where there are doubts of the financial stability of the applicants; where the persons affected by the order are trustees or executors and the immediate payment of the compensation is necessary to wind up an estate; where the persons to whom the compensation is payable cannot be found or cannot be ascertained. In all applications the Court requires evidence of the financial position of the applicants, and it is usual to produce at least the last year's balance sheet, and such additional evidence as may be necessary in accordance with the circumstances of each particular case, as the Court requires sufficient evidence of the financial standing of the applicant and that the applicant is in a position to carry out the terms of the order of the Court.

Provisions as to the Railway and Canal Commission.

10.—(1) The provisions of the Railway and Canal Traffic Act, 1888, as amended by any subsequent enactment, relating to the procedure for the determination of questions under that Act (including the provisions relating to appeals) shall apply to the determination of questions relating to applications under this Act as if they were herein re-enacted and in terms made applicable to the provisions of this Act[1]:

Provided that—

(a) the Commission, in any case in which they think it expedient to do so, may call in the aid of one or more qualified assessors and hear the case wholly or partially with the asistance of such assessors[2];

(b) the Commission may hold a local inquiry for the purposes of this Part of this Act by any one of their members, or by an officer of the Commission, or other person whom they may direct to hold the same, and the said provisions of the Railway and Canal Traffic Act, 1888 (except the provisions relating to appeals), shall, so far as applicable, apply to such inquiries, and any member, officer, or other person directed to hold an inquiry shall have power to administer oaths, and shall report the result of the inquiry to the Commission[3];

(c) the discretion of the Commission with respect to costs shall not be limited in the manner provided by section two of the Railway and Canal Traffic Act, 1894[4];

(d) the rules regulating the procedure of the Commission may apply any of the provisions of the Lands Clauses Acts relating to the payment of compensation so far

as not inconsistent with the provisions of this Part of this Act.[5]

(2) The Board of Trade and any other Government Department shall give to the Commission such assistance as the Commission may require for the purposes of their duties under this Part of this Act, and shall be entitled to appear and be heard at any proceedings on an application before the Commission under this Part of this Act.[6]

[1] Only the provisions of the Railway and Canal Traffic Act, 1888, relating to procedure (including appeals) are incorporated by reference under this sub-section.

It would therefore appear that questions relating to—

Section 5. Sittings of commissions,
,, 8. Jurisdiction of commissions,
,, 12. Power to award damages,
,, 17. Appeals,
,, 18. General powers and enforcement of orders,
,, 19. Discretion as to costs,
,, 20. Power to make rules,
,, 21. Appointment of staff,
,, 22. Salary of commission and staff,

under the Railway and Canal Traffic Act, 1888, are the main sections introduced by reference. The effect of the provisions of paras. (a), (b), (c), (d) of this sub-section upon questions of practice under the Railway and Canal Traffic Act, 1888, is also of importance. This section is incorporated in the Mining Industry Act, 1926, s. 24, *post*, p. 103, and the jurisdiction in relation to procedure for the determination of questions by the application of the provisions of the Railway and Canal Traffic Act, 1888, applies to proceedings under the Mines (Working Facilities and Support) Act, 1923, and the Mining Industry Act, 1926. The Court determines whether all or any of the objectors to any application shall be heard, and in any event the legal rights of parties affected by an application are safeguarded by the insertion of protective clauses in the order of Court.

[2] The assessors have in the past been mining experts, but it is possible that in applications for the grant of ancillary rights assessors might be called in to advise on surface values, the value of land, or the cost of setting up accommodation or other works. It is seldom that an assessor is called in, and only in cases of extreme difficulty arising out of disputed facts as to the practice of mining. The costs of the assessor would usually be borne by the parties who are appearing before the Court.

One or more assessors.

The advantage of having more than one opinion is obvious, but the question of expense would be a determining factor in calling in additional expert opinion.

Wholly or partially.

The assessors would either attend the entire hearing or be called in to consider particular questions of difficulty or importance. It is not the practice to call in the assistance of assessors in ordinary applications that come before the Commission.

[3] **Local inquiry.**

After due notice had been given to the parties interested, the Commission, through the person appointed, would presumably sit *de die in diem* until all questions had been inquired into.

Any one of its members.

This would, of course, include the appointed and the *ex-officio* Commissioners, any one of whom may be appointed. Apparently not more than one such Commissioner could be appointed.

Any other person.

This again is in the singular number, and apparently one person only could hold the inquiry.

Administer oaths.

It would appear that the person appointed to hold the inquiry could take evidence on oath by virtue of the provisions of section 18, sub-section 1 of the Railway and Canal Traffic Act, 1888, which is incorporated by reference in matters of practice under the present Act, and he would have all necessary powers to enforce the attendance of witnesses at the inquiry and to consider all questions relating to the facts within the scope of the inquiry.

Report the result of enquiry.

This, presumably, would be in the nature of a private report to the Commission, even if the proceedings which gave rise to the direction for an inquiry arose in open Court. The findings of the Commission on the basis of their Commissioner's or other appointed person's report to the Commission, would presumably be given in open Court on the adjourned hearing of the cause which necessitated the inquiry.

[4] **Section 2 of the Railway and Canal Traffic Act, 1894,** so far as material to this section, is as follows :—

"In proceedings before the Railway and Canal Commissioners . . . the Commissioners shall not have power to award costs on either side, unless they are of opinion that either the claim or the defence has been either frivolous or vexatious."

The usual practice of the Court has been not to award costs to either applicant or objectors or respondents, unless for some exceptional reason any particular party has been damnified by the proceedings. Ordinary opposition to an application is not a sufficient ground for awarding costs to the objector, even although his rights are or may be adversely affected as a result of the application being granted.

The Court exercising its jurisdiction in awarding costs to an applicant does so on the basis that the party to the proceedings against whom the order is made has been vexatious in his opposition.

The Court follows the practice laid down under the Parliamentary Costs Act, 1865, s. 2, and is also guided by its decisions under the various Railway and Canal Traffic cases.

In the cases under the Mines (Working Facilities) Act, 1923, in only certain instances were costs awarded.

In one case necessary objectors were not joined as respondents; in another case the only objectors to the application had been vexatious in their opposition (*y*).

In an application made jointly under the Mines (Working Facilities and Support) Act, 1923, and the Mining Industry Act, 1926, costs were awarded against the applicants because they had on the facts presented an incomplete scheme. Subsequently the application was again presented, and the applicants succeeded on merits. Certain points of law and construction were argued at the first hearing, and the decision was in favour of the applicants. The respondents appealed on these questions of law and construction and failed, and costs were awarded in favour of the applicants (*z*).

In only rare cases is any award as to costs made by the Court.

(*y*) *Re New Hucknall Colliery Co., Ltd.*, and cases cited at p. 150, and see the various cases reported in the Railway and Canal Traffic cases, *ante*.

(*z*) *Re Tilmanstone (Kent) Collieries, Ltd.* (1927), 43 T. L. R. 349; *Re Tilmanstone (Kent) Collieries, Ltd., ante*.

[5] The sections of the Lands Clauses Consolidation Act, 1845, dealing with questions of payment of compensation or deposit of moneys before entry on the lands or in cases of dispute are :—

Sections 69-80, concerning the application and payment of compensation moneys generally.

Sections 84-88, concerning the entry on lands by promoters before purchase on making a deposit.

Section 107, concerning payment of deposit to commoners.

Sections 109, 111, and 113, concerning payment or deposit of moneys to mortgagees.

Section 117, concerning deposit of moneys in cases of refusal to release rent charges.

It is submitted that the sections which are incorporated by reference are sections 69-80. It is a question for consideration whether the sections of the above Act dealing with deposit of moneys before entry or in cases of dispute were intended to be incorporated under this sub-section.

The sub-section does not apply to the method of ascertaining compensation, or to the payment of costs by promoters on the acquisition of lands.

[6] Under this sub-section, it is suggested that on application being made by an applicant to the Commission by way of summons, the Board of Trade could be called upon by the Commission to show cause as to why any particular application for the grant of any rights under this Act had been refused by them on the grounds that the application was not *prima facie* in accordance with the provisions of section 5. Of course any such application would be made at the risk of the applicant having to pay the costs of all parties affected by it, should he be unsuccessful. An application was in fact made in an unreported case, asking the Commission to assist the applicants in procuring the forwarding of a case by the Board of Trade where the applicants claimed that a *prima facie* case had been made out, and the Board of Trade were of opinion that on the correspondence the questions in issue could still be settled by private arrangement. Mackinnon, J., expressed the following view as to the effect of section 5 (*a*) :—

" We have allowed Sir Arthur Colefax to mention this matter. His clients are desirous of bringing before this Court an application under section 13, sub-section 2, of the Mining Industry Act, 1926. This Court cannot do anything with regard to such an application, and has no jurisdiction in regard to it, until that which is provided for by the sub-section has occurred, namely, that the application for the purpose has been referred to the Railway and Canal Commission under the principal Act. That is the Act of 1923. It has to be referred to this Court under section 5 of that Act by the Mines Department of the Board of Trade.

" The matter which Sir Arthur Colefax desired to bring to our attention was the provisions which are contained in section 5 of the Act of 1923, with regard to the functions of the Mines Department of the Board of Trade. That section, by the first sub-section, provides that any person in the position of Sir Arthur Colefax's clients may make an application to the Board of Trade. Then, by sub-section 4 : ' The Board shall consider the application, and shall, unless after communication with such other parties interested (if any) as they may think fit they are of opinion that a *prima facie* case is not made out, refer the matter to the Railway and Canal Commission.' Then there is a proviso : ' Where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition, or having unreasonably refused to grant it, or having demanded terms which are unreasonable, the Board shall not so refer the application to the Commission without first having communicated with that person.' I express no opinion whatever as to the merits of this matter, or whether any criticism of the action of the Mines Department of the Board of Trade, such as has been

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(*a*) See *Tilmanstone (Kent) Collieries, Ltd.* v. *Rice and Others* (unreported, December, 1929).

made by Sir Arthur Colefax, is in the slightest degree justified; neither have I the material, nor should I desire to do so; but I do not think that it is improper for me to point out that in my view the whole scheme of this legislation is this, that the Board of Trade is concerned upon the generality of the thing to see whether there is a *prima facie* case for proper consideration by this Court. Any settlement of details as to the terms on which any concession should be made to an applicant, or as to the rights of the party against whom an application is made, is, in my view, a matter for the decision of this Court. The section seems to me to contemplate that the Mines Department is concerned rather with the question whether there is such a dispute and such matters of detail that ought to be brought before this Court. It is quite clear, and in accordance with the proviso, that before considering the question of a *prima facie* case, the Board of Trade are directed to apply to the other person, the opponent, if I may so call him, the person against whom the application is made. The question I think contemplated by such an application is not whether by negotiation between the two parties some other sort of right might in different terms be by arrangement arranged between them. The proviso contemplates: 'Where it is alleged that the right in question,' and so on, that is to say, that which the applicant is asking for. In my view, I do not think the section contemplates that a prolonged investigation should be carried on as to whether, not this right that the applicant is asking for, but some other varied arrangement between them, involving just those details which, in my view, are the proper concern of this Court in settling the respective rights and obligations of the parties, if and when an application in respect of the right in question, that is to say, the right which the applicant is asking for, comes to be considered. As I say, I express no opinion whatever as to whether there has been any departure by the Mines Department from the proper discharge of their function in the respect which I have indicated, in my view, is their proper province; but I see no harm in stating my view, as I have done, as regards the meaning of this section. I would only add that in such a matter as this it is obvious that as soon as it appears likely that there will be a dispute, or that there is a dispute, between the parties, as to the details of the order, if any, which ought to be made upon the application, as soon as it appears that there is certain to be a dispute as to those details, then, if the Mines Department thinks that a *prima facie* case is made out, or rather, unless they are satisfied that it is not made out, to use the terms of the section, it is desirable that the application should be referred to this Court with the greatest expedition possible."

The above judgment has been set out in full so that the effect of the actual language used can be clearly seen. No good will result from making an application to the Railway and Canal Commission with regard to any suggested delay on the part of the Board of Trade, as the Commission have no jurisdiction in the matter.

Effect of grant of right.

11. A right granted under this Part of this Act shall not confer on the person to whom it is granted any greater or other power than if the right had been granted by a person legally entitled to grant the right, or relieve the grantee from any obligation or liability to which he would have been subject had the right been granted by such a person.[1]

[1] The effect of this section appears to be that the Court stands in the place of a grantor, and can grant any right in accordance with the provisions of the Act, provided that it is a right which can legally be granted by some persons or person affected by the application.

It is a question for consideration whether the Court could assist any party affected by an application, whether as applicant or otherwise, to derogate from

this grant; when the last three lines of the section are considered it is obvious that they were inserted to secure, to the persons affected by any order, that the grantee would not be placed in any better position under an order of the Court than he would have been had the grant been made privately by the person who is affected by the order of the Court as a statutory grantor.

Provisions as to tenants for life, etc.

12. An order under this Part of this Act may confer rights on a tenant for life or on any person having the statutory powers of a tenant for life, or any trustee, personal representative, or other person in a fiduciary position, and, where any such rights are so conferred upon any such person, the rights shall be deemed to form part of the property subject to the settlement or the estate of the deceased person or the property subject to the trust, as the case may be.[1]

[1] This section establishes the position generally of a tenant for life, so far as the application for capital moneys, royalties or payments by way of rent or for easements are concerned, and they are generally to be treated as forming part of the trust estate.

It is presumed that the words " the rights shall be deemed to form part of the property subject to the settlement," establishes the position of the parties under the settlement, and that the grant of any order in so far as it affects settled land is made subject to the terms of the settlement.

Reference in this direction should be made to the Settled Land Act, 1925, 15 Geo. 5, c. 18, s. 47, by which three-quarters of the rent of minerals under a mining lease where the tenant for life is impeachable for waste and otherwise a quarter of the rent shall be treated as capital, unless a contrary intention is expressed in the settlement, the residue being treated as rents and profits. Reference should also be made to Part III of that Act, sections 73-82, as to the investment of capital moneys under that Act.

Saving of rights under the Railways Clauses Act, etc.

13. Nothing in this Part of this Act shall prejudicially affect the right under the Railways Clauses Consolidation Act, 1845, or any Act modifying that Act, including Part II of this Act, or any other Act, whether public general, or local and private, of any railway or canal company local authority or other statutory body to acquire minerals for the purposes of support, or any rights or interests in minerals which may have been acquired by any such company authority or body, or any right of support from minerals to which any such company, authority or body may be entitled, or any right empowering any such company authority or body to acquire the rights to which they are entitled directly or indirectly under any special Act or order relating to the company authority or body or any statute incorporated therewith, or shall confer on any such company authority or body a right to acquire under this Part of this Act any rights to prohibit or restrict the working of minerals.[1]

[1] This section is one of some difficulty.

It is submitted that the intention of the Legislature is to protect the interest of statutory bodies that have acquired or are entitled to acquire support for their undertakings under the code.

It is arguable that where the right to support has been acquired otherwise than under the code, *e.g.*, by private agreement, that such public or statutory bodies will not be protected in their right to support under this saving section of the statute. If this is so, an application to work minerals which would otherwise fall within the four walls of the Act should not be refused on the ground that the grant of the right applied for would result in the rescission of an agreement to which the applicants were parties for the support of the surface of a statutory body. Proper compensation would, of course, be paid to the party whose position would be adversely affected by an order.

The main difficulty in this section is to read the words "to acquire the rights to which they are entitled," which refers to the acquisition of rights under Part II of this Act or under other similar statutes in conjunction with the last three lines of the section which directly prohibits a statutory undertaking from "prohibiting or restricting" the working of minerals.

If the intention of the Legislature is not to differentiate between statutory support as distinct from support acquired *inter partes*, it would seem that the words from "or shall confer" to the end of the section are in conflict with the remainder of the section.

Interpretation.

14.—(1) For the purposes of this Part of this Act, unless the context otherwise requires—

"Minerals" includes all minerals and substances in or under land obtainable by underground or by surface working;

"Surface" in relation to land includes any buildings, works or things erected, constructed or growing thereon;

"Right to let down the surface" includes a right to let down superincumbent or adjacent strata up to and including the surface;

"Lease" includes underlease or other tenancy and a licence, and "lessor" and "lessee" have corresponding meanings;

"Copyhold land" has the same meaning as in the Law of Property Act, 1922.[1]

(2) In the application of this Part of this Act to Scotland for the reference to the Railways Clauses Consolidation Act, 1845, there shall be substituted a reference to the Railways Clauses Consolidation (Scotland) Act, 1845.

[1] "*Copyhold Land*," as defined in section 189 of the Law of Property Act, 1922, is as follows :—

(a) Land commonly known as customary land or customary freehold land where the freehold is in the lord and not in the customary tenant; and

(b) Land of copyhold tenure held for life or lives or for years, whether or not determinable with life, where the tenant has by custom a perpetual right of renewal, subject or not to the fulfilment of any conditions;

(c) Land held in free tenure for life or lives or for years, whether or not determinable with life (but subject to custom) where the tenant has by custom a perpetual right of renewal, subject or not to the fulfilment of any conditions;

"Copyholder in fee" means the person who is admitted in respect of the inheritance;

"Tenant" means the person in whom the enfranchised land is vested by virtue of this Act, and includes the persons deriving title under him;

"Prescribed" means prescribed by regulations made by the Minister;

Other expressions have the same meaning in Part V of this Act as in the Copyhold Act, 1894, but without prejudice, where applicable, to the general definitions in this Act.

PART II.

MINERALS UNDER RAILWAYS.

Amendment of 8 & 9 Vict. c. 20, ss. 78 to 85 as incorporated in future Acts.

15. The Railways Clauses Consolidation Act, 1845, as incorporated in any Act, order, or other instrument relating to a railway company passed or made after the passing of this Act, shall, except as otherwise expressly provided in that Act order or instrument, have effect as if for sections seventy-eight to eighty-five thereof, inclusive, the following provisions were substituted, and as if the First, Second and Third Schedules to this Act were inserted in that Act as the First, Second and Third Schedules thereto.[1]

Conditions under which minerals under railway may be worked.

78.—(1) If the mine owner of minerals lying under an area of protection as hereinafter defined is desirous of working any such minerals, he shall give to the company and also to the royalty owner (if any) notice of his intention so to do at least thirty days before the commencement of the working and on the receipt of such notice the company and the royalty owner respectively may cause the minerals to be inspected by any person appointed for the purpose by the company or royalty owner as the case may be.[2]

(2) If it appears to the company that the working of any of the minerals to which such notice relates will be likely to damage the railway or works or any part thereof, the company may, at any time after the receipt of such notice, give a counter-notice to the mine owner requiring him to leave unworked all or any part of such minerals, and the counter-notice shall specify the minerals (hereinafter referred to as the specified minerals) so required to be left unworked and the particular portion of the railway or works (hereinafter referred to as the protected works) for the support of which the specified minerals are required to be left unworked.[3]

(3) Where any such counter-notice has been served on the mine owner, he shall forthwith serve a copy thereof on the royalty owner (if any).[4]

(4) Where any such counter-notice has been served on the mine owner, the specified minerals shall not be worked or got after the service of the counter-notice, and the company shall pay compensation to the mine owner and the

royalty owner (if any) for the loss caused by the specified minerals being left unworked.[5]

(5) The area of protection in relation to any seam of minerals shall be the area comprising any railway or works of the company and such a lateral distance therefrom, on all or both sides thereof, as is equal at each point along the railway to one-half of the depth of the seam at that point or forty yards, whichever be the greater; and, when the said lateral distance exceeds forty yards, the area of protection shall be divided into two areas :

(a) an inner area of protection consisting of the area comprising the railway or works and a distance of forty yards therefrom on all or both sides thereof; and

(b) an outer area of protection consisting of so much of the area of protection as is not included in the inner area of protection.[6]

Compensation for leaving minerals unworked.

78A.—(1) The compensation payable by the company to the mine owner and the royalty owner respectively for the loss caused by the specified minerals being left unworked shall, in default of agreement, be determined by arbitration :

Provided that so far as such compensation is payable in respect of the value of specified minerals—

(i) the compensation payable to the mine owner and to the royalty owner shall be separately assessed [7];

(ii) the compensation payable to the mine owner shall be a sum for each ton of the specified minerals, the rate per ton in the case of minerals lying under the outer area of protection being one-third of the rate which is or would be awarded in the case of minerals lying under the inner area of protection [8];

(iii) the compensation payable to the royalty owner shall be based on the amount which would have been received from time to time by way of royalty in respect of the specified minerals if they had been worked out in the ordinary course, and the royalties payable had been—

(a) in the case of such of the specified minerals as lie under the inner area of protection, the same as those reserved by and payable under the lease comprising the minerals and subsisting at the date of the counter-notice; and

(b) in the case of such of the specified minerals as lie under the outer area of protection, one-third of the royalties so reserved and

payable with the addition to such one-third of one penny per ton [9];

(iv) in every case the arbitrator shall state in his award the tonnage of the specified minerals on which his award is based.[10]

(2) The mine owner shall also be entitled to be paid by the company the amount of any increase in the cost of working any part of his minerals (other than the specified minerals) which may have been caused by the failure of the company to give the counter-notice within such a reasonable time as would have enabled the mine owner to avoid such increase in cost, and, in default of agreement, the amount so payable by the company shall be determined by arbitration.[11]

Power to work minerals not affected by a counter-notice.

79.—(1) If within thirty days from the service by a mine owner on the company of a notice of intention to work any minerals no counter-notice is served by the company, the mine owner may, after the expiration of those thirty days, and until a counter-notice is served, work any minerals to which the notice relates, so, nevertheless, that the same be done in the manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such minerals in the district where the same shall be situated.[12]

Where a counter-notice is served, whether before or after the expiration of the said thirty days, and the counter-notice does not require the mine owner to leave unworked the whole of the minerals to which the notice relates, the foregoing provisions shall apply to any minerals to which the notice relates which are not specified minerals in like manner as if no such counter-notice had been served.[13]

(2) If any damage or obstruction is occasioned to the railway or works by any improper working of such minerals, the same shall be forthwith repaired or removed (as the case may require) and such damage made good by the mine owner at his own expense; and if such repair or removal is not forthwith done, or, if the company think fit, without waiting for the same to be done by the mine owner, they may execute the same and recover from the mine owner the expense occasioned thereby by action.[14]

Liability in respect of authorised workings.

79A.—(1) If a mine owner works any minerals lying under any part of the area of protection in the manner authorised by this Act, he shall nevertheless become liable on demand by the company (subject as hereinafter provided) to contribute towards the expenses properly incurred, or to be incurred, by the company from time to time thereafter in

making good any damage caused by such working to the railway or works of the company (not being protected works comprised in any counter-notice relating to such area of protection) the appropriate percentage (if any) of those expenses, the appropriate percentage being such as is specified in the First Schedule to this Act according to the depth of the minerals being so worked.[15]

(2) The liability of a mine owner under this section in respect of any part of the railway or works on which such expenditure has been incurred shall not exceed an aggregate sum equivalent to sixpence for each ton of the commercially workable minerals, gotten or ungotten, in such part of any seams as lies under the area ascertained as respects the several seams in accordance with the rules contained in the Second Schedule to this Act, being seams which have been or are being worked under such area as aforesaid :[16]

Provided that, in ascertaining such aggregate sum as aforesaid, minerals gotten more than six years before the date on which a contribution shall have been demanded by the company under this section shall not be reckoned.

(3) Any mine owner making a contribution under this section, who is a lessee, shall be entitled to deduct from any royalties then or thereafter becoming due from him to the royalty owner under the lease, one-third part of the amount which he has so contributed as aforesaid, subject, however, to this limitation : that if the royalty payable by the mine owner under his lease is at the rate of less than six pence per ton, the amount deducted shall not exceed the amount produced by multiplying one-third of such rate per ton by the tonnage of the minerals with reference to the aggregate amount of which the maximum liability of the mine owner is to be so calculated as aforesaid ; and, where the mine owner is entitled to make such a deduction, the sum reserved by and payable under the lease shall be deemed to be the net amount arrived at after making the deduction :

Provided that no such deduction shall be allowed when the liability of the mine owner to the company is a liability arising out of an arrangement between the mine owner and the company with respect to the working of minerals under or near the railway or works.[17]

(4) The liability of a mine owner under this section shall be subject to the following further limitation as respects damage done by workings in any single mine, that is to say, that when the aggregate of the sums paid by the mine owner in satisfaction of such liability amounts to a sum equivalent

to sixpence for each ton of commercially workable minerals, gotten or ungotten, in such part of any seams as lies within the mine and under an area extending laterally on both sides of the railway or works to a distance ascertained in accordance with Rule 1 of the said Second Schedule and extending longitudinally to a distance co-extensive with the portion of the railway lying over or adjacent to the mine, being seams which have been or are being worked under such area as aforesaid, the mine owner shall not be liable to make any further contribution under this section towards the expenses of making good any damage caused to any part of the railway or works by the working of such seams as aforesaid in that mine.

For the purposes of this provision, all the minerals which the mine owner is entitled to work, and which have been, or would in the ordinary course of events and in accordance with good mining practice be, worked from the same shafts or adits shall be deemed to be a single mine.

Where the liability of a mine owner under subsection (2) of this section is reduced by the operation of this subsection, the right of the mine owner under subsection (3) thereof to make deductions from royalties shall be proportionately reduced.[18]

(5) Where a single mine, as hereinbefore defined, is held under leases granted by more than one lessor, any deductions which the mine owner is authorised under this section to make shall be made from the royalties payable to such one or more of such lessors, and in the latter case in such proportions, as in default of agreement may, on the application of the mine owner or any of the royalty owners, be determined by arbitration.[19]

(6) If any dispute arises as to the amount of the expenses towards which a mine owner is liable to contribute under this section, or the amount of his contribution, or the amount to be deducted as between a mine owner and a royalty owner, it shall be settled by arbitration, and, where any such arbitration between a company and a mine owner is to be held, the royalty owner (if any) shall be entitled to have notice of the intended arbitration, and to appear and be heard at the arbitration proceedings.[20]

Notices and accounts with respect to damage.

79B.—(1) When and so far as reasonable and practicable, the company shall give notice to the mine owner and the royalty owner (if any) affected specifying particulars of—

(i) the railway or works to which damage has been caused or to which damage is apprehended from the

working of any minerals under the area of protection sufficient to enable the same to be identified;

(ii) the nature of the damage or apprehended damage; and

(iii) the nature of the works intended to be carried out for the purpose of making good or preventing the damage.[21]

(2) The company shall keep separate accounts differentiating the cost of the ordinary maintenance of the railway or works from the cost of making good any damage caused to the railway or works by the working of any minerals under the area of protection, and such accounts shall, at all reasonable times, be open for inspection by or on behalf of a mine owner working minerals under or near to such railway or works and the royalty owner (if any) of such minerals.

Rights of access through specified minerals.

80. If the working of any minerals is prevented under this Act by reason of a counter-notice, a mine owner whose minerals extend so as to lie on both sides of the specified minerals may cut and make such airways, headways, gateways, or water levels through the specified minerals and the strata above or below the same or any of them as may be requisite to enable him to ventilate, drain, and work his remaining minerals; but no such airway, headway, gateway, or water level shall be cut or made upon or so as to injure any part of the protected works, or within forty yards of any other airway, headway, gateway, or water level, nor shall the same without the consent of the company (which consent shall not be unreasonably withheld) be greater than eight feet wide and eight feet high, unless the top of the same is more than one hundred and sixty yards below the average rail level of the protected works, or, if the top exceeds that distance, than thirteen feet wide and eight feet high.[22]

Additional expenses for severance.

81.—(1) Where a counter-notice has been given by the company to a mine owner, the company shall from time to time pay to the mine owner the appropriate percentage (if any) of all such additional expenses and losses as may be incurred by such mine owner in consequence of such counter-notice by reason of—

(i) the continuous working of the mine being interrupted; or

(ii) the mine being worked in such manner and under such restrictions as not to prejudice or injure the protected works.

(2) For the purpose of this section, the appropriate

percentage means the percentage determined in accordance with the rules contained in the Third Schedule to this Act.[23]

(3) If any question or dispute arises between the company and the mine owner concerning the amount of such losses or expenses, or as to the appropriate percentage, it shall be settled by arbitration.

(4) Where the minerals specified in a counter-notice lie in different seams, the amount payable by the company to the mine owner under this section shall be calculated separately as respects each seam:

Provided that, where the works on which any additional expenditure is incurred serve more than one seam, that expenditure shall, for the purposes of this section, be apportioned between the seams served in such manner as, in default of agreement, may be determined by arbitration.[24]

Compensation to surface owners.

82. If any loss or damage is sustained by the owner, lessee, or occupier of the land over any specified minerals (not being the owner or lessee of the specified minerals) by reason of the making of such airway or other authorised work as aforesaid, where neither that work nor any like work, would have been necessary save on account of the prevention of the working of the minerals, the company shall make full compensation to such owner, lessee, or occupier of the surface for the loss or damage sustained by him, such compensation in default of agreement to be determined by arbitration.[25]

Rights of inspection.

83.—(1) For ascertaining whether or not any minerals are being worked or are about to be or have been worked so as to damage the railway or works of a company, any person appointed by the company may, after at least twenty-four hours notice has been given by the company, enter upon any land (through or near which the railway passes) which the company believe to contain or to have contained such minerals, and may enter into and return from any such minerals or the works connected therewith; and, for that purpose, the person so appointed may make use of any apparatus or machinery belonging to a mine owner, and use all necessary means for discovering the distance from such railway or works to the parts of the minerals which are being or have been worked or are about to be worked; and, after giving a like notice, may inspect and take copies of so much of the working plans and sections of the mine as relate to minerals the working whereof affects or has affected or may affect the railway or works.

(2) A mine owner who desires to work any minerals under

or near to the railway or works of the company, and also the royalty owner (if any) or any person duly authorised by either of them, may, at any time, either before or during or after the working thereof, upon giving at least twenty-four hours notice to the company, and subject to such reasonable conditions as may be imposed by the company, enter upon the railway or works and inspect the same and take levels or particulars thereof.[26]

Penalty for refusal to allow inspection.

84.—(1) If any mine owner refuses to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works or to inspect and take copies of such plans and sections in manner aforesaid, every person so offending shall, for every such refusal, become liable to pay to the company a sum not exceeding twenty pounds.[27]

(2) If the company refuse to allow a mine owner or royalty owner or such duly authorised person as aforesaid to enter upon or inspect any railway or works or to take levels and particulars thereof in manner aforesaid, the company so offending shall, for every such refusal, become liable to pay to the mine owner or royalty owner a sum not exceeding twenty pounds.[28]

Protection against improper working.

85. If it appears that any minerals have been worked or are being worked contrary to the provisions of this Act or the special Act, the company may, if they think fit, give notice to the mine owner thereof, requiring him to construct such works and to adopt such means as may be necessary or proper for making safe such railway or works and for preventing injury thereto; and if, after such notice, the mine owner shall not forthwith proceed to construct the works necessary for making safe the railway, the company may construct such works and recover the expense thereof from the mine owner by action.[29]

Power to vary rights by agreement.

85A. Notwithstanding anything contained in this Act, a mine owner, a royalty owner, and the company or any two of them may, by agreement, alter, extend, or otherwise vary their respective rights under the provisions of this Act with regard to any minerals to which this Act applies, but not so as to prejudice the rights of any mine owner, royalty owner, or company not a party to the agreement without his or their consent.[30]

Savings.

85B.—(1) Nothing in this Act shall affect any agreement between the mine owner and the royalty owner for the payment of any rent or royalty [31] :

Provided that—

(i) the payment of compensation by the company to the royalty owner in respect of any minerals shall extinguish any liability by the mine owner to pay any royalty in respect of the same minerals [32];

(ii) the mine owner shall be entitled to make such deductions as are authorised by subsection (3) of section 79A of this Act notwithstanding anything in any agreement between him and the royalty owner entered into before the first day of August, nineteen hundred and twenty-three, unless the agreement was made after the first day of November, nineteen hundred and twelve, and expressly or by necessary implication provided for the payment of royalties in respect of the minerals supporting the railway or works in the event of the mine owner working them in virtue of a right acquired by agreement or statute or otherwise, or for the payment of royalties in respect of such minerals whether they are or are not worked [33];

(iii) if the exercise by the company of powers conferred upon them by the foregoing provisions of this Act as to minerals in the area of protection will prevent the mine owner from working such quantity of minerals as at the royalties reserved will produce the sum total of the fixed or minimum rent remaining payable under the lease, or otherwise occasions serious hardship having regard to the obligation of the mine owner to pay such rent, or owing to any provision in the lease restricting the time within which a deficiency due to previous short working may be made good, such adjustment shall be made between the royalty owner and the mine owner as, failing agreement, may be determined by arbitration, and any question whether the circumstances are such as to give rise to such a right of adjustment shall be similarly determined.

Where at the time of the exercise by the company of such power as aforesaid any deficiency due to previous short working which may be made good in a subsequent period exists,

the amount of such deficiency shall be treated for the purposes of this proviso as if it formed part of the sum total of the fixed or minimum rent remaining payable under the lease.[34]

(2) Nothing in this Act shall alter, diminish or affect any right to let down the surface, either unconditionally or subject to payment of compensation, or to any other condition, which a mine owner or royalty owner may possess, whether by statute grant lease agreement or otherwise, derived from a title antecedent to the acquisition by the company of their interest in the surface, or conferred on him by a reservation contained in the grant to the company, and a mine owner having such a title and having served a notice in accordance with this Act with respect to the working of any minerals, shall be free to work any such minerals, as to which a counter-notice shall not have been received, discharged from all the restrictions and provisions of this Act, other than those contained in subsection (2) of section seventy-nine of the Act, but, if a counter-notice is served, the minerals to which such counter-notice relates, shall, for the purposes of the assessment of compensation payable to the mine owner or royalty owner under this Act for leaving the same unworked, be deemed to be minerals lying wholly under the inner area of protection, and the appropriate percentage for the purpose of section eighty-one of this Act shall be one hundred.[35]

Serving of notices, counter-notices, etc.

85C. Section sixty-seven of the Conveyancing Act, 1881, shall apply to notices and counter-notices and copies thereof required or authorised to be served or given under the provisions of this Act with respect to mines lying under or near the railway, as if it were herein re-enacted and in terms made applicable to such notices, counter-notices and copies thereof, and to the persons by or on whom the same are so required or authorised to be served.[36]

Interpretation.

85D.—(1) In the foregoing provisions of this Act with respect to mines lying under or near a railway, unless the context otherwise requires—

"Mine owner" includes the owner, lessee, or other person entitled to work and get minerals;

"Seam" in relation to minerals includes bed, lode and vein;

"Surface" in relation to land includes any buildings, works or things erected, constructed, or growing thereon;

"Royalty" includes rent and any other reservation in respect of minerals by the acre, ton or otherwise;

"Royalty owner" includes any person entitled to receive a royalty in respect of minerals;

"Deficiency due to short working" means the amount by which the royalties payable under a lease of the minerals worked fall short of the fixed or minimum rent;

"Lease" includes an under-lease or other tenancy and a licence;

"Lessee" includes an under-lessee and a licensee.

(2) For the purposes of the said provisions, the depth of a seam at any point of the railway shall be taken to be the distance between the rail level and the point where a line drawn vertically through the centre of the railway would first cut the seam of minerals, except that for the purpose of ascertaining the area of protection, but not for any other purpose the said distance shall where the railway is carried through a tunnel, be measured from the point where the said line would cut the natural surface of the land instead of from the rail level.

(3) Where in an arbitration under the said provisions there are more than two parties involved, then, unless all the parties otherwise agree, the arbitration shall be conducted by a single arbitrator appointed by the Board of Trade, and the provisions of this Act with respect to the settlement of disputes by arbitration shall apply as if all the parties had concurred in his appointment as a single arbitrator.

Exemption from liability to leave support otherwise than under Act or agreement.

85E. Save as in this Act, or the special Act, or under any agreement between the company and the mine owner expressly provided, the mine owner as between himself and the company—

(a) shall not be under any liability to leave support either inside or outside the area of protection; and

(b) shall be entitled to remove such support without being liable for any damage thereby caused to the railway or works or any part thereof; but so that the removal shall be done in a manner proper and necessary for the beneficial working of the minerals and according to the usual manner of working minerals in the district in which the same is situate.[37]

[1] Section 15 of the Mines (Working Facilities and Support) Act, 1923, includes sections 78 to 85 of the Railways Clauses Consolidation Act, 1845, and effects a revision of that statute so far as the working of minerals lying

adjacent to or under railway undertakings is concerned. Section 16 is in effect a saving section. The enactment was the result of negotiations which took place between the railway undertakings and the colliery undertakings of Great Britain through their accredited representatives, and is the direct result of the judgment in the *Howley Park Case* (*b*).

Reference should here be made to the provisions of section 77 of the Railways Clauses Consolidation Act, 1845, which provides generally that a railway company is not entitled to the mines and minerals unless they have been expressly purchased by the railway company. This legislation is in direct exclusion of the common law, and it has, of course, been followed in special Acts by which the common law is thereby excluded (*c*).

Reference should be made to the notes on section 13, *ante*, p. 42.

[2] **Mine owner.**

A wide definition, see sub-section 85D, *post*, including a person entitled to work and get the minerals.

Area of Protection.

See definition, sub-section 78 (5), which includes an inner area of protection and an outer area of protection. The calculation is based upon a distance taken from the area comprising any railway or works and a lateral distance therefrom, on all or both sides thereof as is equal at each point to one-half the depth of the seam, or forty yards, whichever be greater. If the lateral distance exceeds forty yards, then the inner area is the area of forty yards and the outer area exceeds this distance. Prior to the *Howley Park Case* there was no area outside the forty-yard area.

Outside the inner area of protection and the outer area of protection the common law still applies.

Notice to work.

This is no innovation, except that the area with reference to which the notice is given is extended by this section.

[3] This is a protection to the railway company. It is possible that after service of a "counter-notice" (formerly a "notice to treat") the railway company may find that the possibility of damage to their undertaking does not exist, and the notice would then be withdrawn. During the existence of a "counter-notice" the mine owner cannot work the minerals the subject of the "counter-notice."

[4] This is a new provision. Royalty owners were not previously contemplated under the Railways Clauses Consolidation Act, 1845.

[5] The basis of compensation is set out under sub-section 78A. The Act contemplates separate assessment for the mine owner and royalty owner, the amount to be agreed, and failing agreement, to be determined by arbitration; the compensation being based upon the method of computation laid down in the Act.

[6] The area of protection in any event is limited. It is:—

(1) The area comprising any railway or works up to forty yards, so long as it does not exceed one-half the depth of the seam.

(2) An area exceeding forty yards, based upon a lateral measurement of one-half the depth of the seam on both sides of the area comprising the railway or works. The result is that the company can claim (a) the area of their railway or works; and (b) an area outside this area up to one-half the depth of the seam. There is

(*b*) See *Howley Park Coal, etc., Co.* v. *L. & N. W. Ry. Co., ante.*

(*c*) *Re Lord Gerard and the L. & N. W. Ry. Co.*, [1895] 1 Q. B. 459; *L. & N. W. Ry. Co.* v. *Walker*, [1903] A. C. 289.

nothing in the section suggesting that the lateral measurement over forty yards shall include the area of the railway or works.

The area outside the forty-yard area is the outer area of protection, and it is in this area that the slab principle of measurement of the coal has been introduced.

7 Separate assessment for the mine owner and royalty owner is essential. Such assessment cannot be overcome by agreement, even if a mining lease should contemplate any such arrangement.

8 This is entirely new and is the direct result of the decision in the *Howley Park Case* (*d*).

9 The wording of the compensation clause for the royalty owner differs from that of the mine owner in that the compensation to the mine owner shall be "a sum." In the case of the royalty owner it is definitely based upon the amount of the royalty as to (a) the inner area of protection, the sum reserved by the lease; and as to (b) the outer area of protection, one-third of that sum.

10 It would appear that the arbitrator's task in the case of the royalty owner's compensation is a simple one.

11 This section is a wide one, and it is a question of fact in each particular case how far the cost of working has been increased by the railway company's failure to give the counter-notice. There is no limit as to the amount that may be awarded on account of such increase.

This section does not affect the rights of all parties interested to claims for compensation on the joint effect of section 6 of the Railway Clauses Consolidation Act, 1845, and this Act. The decision on which this rule was based was under section 78 of the Railway Clauses Consolidation Act, 1845 (*e*).

12 If the mine owner works in accordance with the best mining practice in the district, at the expiration of thirty days after service of a notice of intention to work, without receiving service of a counter-notice, he will only be liable for damage occasioned as the result of these workings in accordance with the percentage contained in Schedule I. See sub-section 79A.

13 "*The foregoing provisions*," namely, the provisions as to compensation for the loss of the specified minerals payable to the mine owner and the royalty owner.

14 This only applies to damage or obstruction as the result of improper working.

The general position of mine owners under the code may here be shortly considered. If a mine owner who works coal without giving notice works illegally, there is nothing to prevent him subsequently giving notice with regard to the coal remaining unworked (*f*).

The question as to when the compensation can be claimed is dependent upon the fact that the period has arrived "when in the ordinary course of the underground workings of the owner they are approached so nearly as to be immediately worked if the workings proceed" (*g*). An owner of the mine, even if he does not intend to work the mine himself, is entitled to give the necessary notice (*h*).

(*d*) See *Howley Park Coal, etc., Co.* v. *L. & N. W. Ry. Co.*, *ante*.
(*e*) See *Smith* v. *Great Western Ry. Co.* (1877), 3 App. Cas. 165.
(*f*) *Edinburgh Trustees* v. *Clippen's Oil Co.*, 25 R. 504.
(*g*) *Dixon* v. *Caledonian, etc., Companies*, 5 A. C., at p. 839.
(*h*) *Midland Ry. Co.* v. *Robinson*, 37 Ch. D. 386; 15 A. C. 19.

In giving a notice it is not necessary that it should be acted upon immediately, as long as the intention is to work within a reasonable time (*i*).

There is an alteration in the law on the question of time within which the railway company should give their counter-notice, as formerly it was held that the company could give their counter-notice at any time after they apprehended danger to their works by mineral workings.

The compensation is claimable by the mine owner when " in the ordinary course of the underground workings of the owner they are approached so nearly as to be immediately worked if the workings proceed " (*k*).

15 This is new. The mine owner in future pays a percentage of the damage resulting from his workings to the railway or works lying within the area of protection.

16 There may be some little difficulty in construing the provisions of this sub-section. The reference to the expenditure on repairs payable by the mine owner, based upon an aggregate sum equivalent to 6d. per ton on the " commercially workable minerals, gotten or ungotten," probably means all coal, whether worked or unworked. But this would result in coal left with the object of affording support to the area of protection being included in the computation where other coal lying within these seams has been worked out, and the damage resulting therefrom will be averaged over the total area of the coal, both worked or to be worked, and also the coal left for support.

17 The mine owner can deduct a total sum of one-third of the amount he has paid from the royalty owner if the royalty is 6d. per ton or exceeds that figure. If the royalty is under 6d. per ton the sum payable is one-third of the royalty rate multiplied by the tonnage as ascertained under sub-section 79A (2) and the Second Schedule. It is clear that where the liability is ascertained in accordance with the terms of a private agreement between the mine owner and the railway company, the royalty owner contributes nothing. This differs from the provisions of sub-section 78A when the specified minerals are left unworked.

18 This limitation is of importance. The words " extending longitudinally to a distance co-extensive with the portion of the railway lying over or adjacent to the mine," presumably mean that the maximum extent of the area of protection is the outer area of protection, exclusive of the inner area of protection, as ascertained in accordance with the provisions of the Second Schedule, and so much of the railway as is included within the outer area of protection as runs parallel to the limits of the mine workings. The total liability of 6d. per ton having been paid, he can work further single seams within the prescribed area without risk of paying any further sums by way of compensation. To gain this advantage, all sums payable by way of compensation for damage must have been ascertained and paid.

The position of the royalty owner is a little difficult, as on a deduction of royalties in the first instance it is presumed that the deduction would be made when the total maximum sum had been ascertained by the mine owner.

It is submitted that the reduction of liability of the mine owner under this sub-section really amounts to a right to work single seams without liability after the maximum liability has been paid. How does this provision benefit the royalty owner, in that his reductions are based upon the maximum sum payable, which presumably is paid and deductions duly made by the mine owner, before the benefit of the limitations contained in the sub-section takes effect?

19 This is an arrangement by which the proportionate amount due by

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(*i*) *Midland Ry. Co.* v. *Robinson*, *ante*.
(*k*) *Dixon* v. *Caledonian, etc., Co.*, *ante*.

various lessors, whose minerals lie within the area of protection, shall be paid by agreement with a right to arbitration.

20 The royalty owner would have no *locus standi* to appear at an arbitration proceeding arising out of a dispute between the mine owner and a railway company on a private agreement. See note to sub-section 3 hereof.

The whole of this sub-section is entirely new legislation; so are the Schedules.

21 The railway company is in the fortunate position they may either serve a counter-notice under section 15, sub-section 78 (2), or they may rely on the provisions of sub-section 79A and demand compensation in accordance with the provisions of that sub-section, as the works are not "protected works" comprised in any counter-notice.

22 This sub-section enables the mine owner to carry out necessary communications between his mine fields. Compare with section 80 of the Railways Clauses Consolidation Act, 1845. That section is varied in particular in that the railway company cannot unreasonably withhold consent to the headings and workings being of a greater dimension than eight feet by eight feet, and that the headings and workings may be increased to a dimension of thirteen feet high and eight feet wide, if the top of the same is more than 160 yards below the average rail level of the protected works.

23 This is an additional compensation payable by the railway company to the value of the minerals required to be left for support.

24 The method of apportioning the amount of compensation is based upon—

(a) The works on which the additional expenditure is incurred being apportioned between two or more seams;

(b) If the specified minerals extend further on one side of the boundary of the protected works than on the other side, they are for the purposes of computation deemed to extend beyond such boundary for the mean of such distance on both sides of the railway.

And compare section 81 of the Railways Clauses Consolidation Act, 1845.

25 See section 82 of the Railways Clauses Consolidation Act, 1845. That section applied to the "owner or occupier"; the present section applies to the "owner, lessee, or occupier."

26 The powers of inspection sanctioned under this sub-section is an amplification of the powers contained in section 83 of the Railways Clauses Consolidation Act, 1845. The mine owner and the royalty owner and their authorised agents have the right to inspect the railway or works, either before, during, or after the working of minerals thereunder.

27 Compare section 84 of the Railways Clauses Consolidation Act, 1845. The refusal to permit the railway company to inspect and take copies of plans and sections is a new offence.

28 This is new legislation for the protection of the colliery company.

29 Compare section 85 of the Railways Clauses Consolidation Act, 1845.

The original section is amended, in that the statutory notice now applies to the "mine owner"—see definition in sub-section 85D, p. 52, *ante*. The "mine owner" includes "the owner, lessee or other person entitled to work the coal." The occupier is not directly referred to, although in most cases the above definition is wide enough to include "occupier."

The words, "in any superior Court" are omitted. Action can now be taken in any Court under the provisions of this section.

30 This sub-section must be considered in conjunction with sub-section 79A (3) and (6), *ante*, pp. 46, 47. The position of the royalty owner is a difficult one. It is submitted that the proviso to sub-section 79A (3) contemplates the exclusion of the royalty owner from agreements between the mine owner and the company, and he benefits therefrom inasmuch as no deduction is permissible on account of royalty payments from any such private agreement. The sub-section now under consideration presumably empowers a mine owner, royalty owner and the company to contract outside the provisions of the Act, so as to make the royalty owner a party to a private agreement, excluding his right to retain his royalties free from the reductions referred to in the above sub-section.

31 This is simply a saving clause as to the preservation of the rights of the mine owner and royalty owner under existing agreements.

32 This contemplates direct payment by the company to the royalty owner.

33 This provision establishes the right of the mine owner to deduct the one-third contribution from his payments to the royalty owner under any agreement made before August 1, 1923; except in the case of agreements made after November 1, 1912, it is expressly provided or by natural implication it must be assumed that provision is made for the payment of royalties in respect of supporting minerals, in the event of their being worked, whether they were actually worked or not. This clause may give rise to interesting questions on interpretation.

34 This sub-section protects the mine owner against loss arising from his inability to meet the fixed or minimum rent, owing to the railway company exercising their powers so as to prevent the working by the mine owner of the protected minerals. It also provides for adjustment of a shorts clause in a lease to the altered position arising under the Act.

" Serious hardship " is a question of fact. It would presumably be considered in relation to a financial loss.

The circumstances giving rise to such a right of adjustment are likewise questions of fact, to be determined by arbitration.

The sub-section also establishes the fact that any deficiency of shorts existing at the time the railway company exercise their powers shall be treated for the purposes of calculation as if it formed part of the sum total of the fixed or minimum rent.

35 This is a most important proviso, protecting the mine owner in his rights of working all minerals to which the mine owner acquired the right to let down the surface before the railway company acquired their interest in the surface. The mine owner can work " discharged from all restrictions and provisions of this Act." The royalty owner has no interest in such minerals, apart from his lease or agreement with the mine owner.

The only restrictions on the mine owner's working such minerals is :—

(1) Where no counter-notice is served, he must comply with the provisions of sub-section 79 (2) and repair or remove damage occasioned to the railway or works by his workings.

(2) In the case of service of a counter-notice, the minerals affected by the counter-notice are all to be deemed for the purpose of compensation as if they lay wholly within the inner area of protection, the mine owner's compensation being thereby largely increased.

36 For section 67 of the Conveyancing Act, 1881, read section 196 of the Law of Property Act, 1925.

Shortly, the provisions are :—

(1) The notice shall be in writing;

(2) The service on a lessee or mortgagor, or other persons interested, is sufficient by designation and not by name;

(3) Service is effective if made at the last known place of abode or business, and served by registered letter;
(4) This section does not apply to notices served in proceedings in Court.

[37] See notes to section 13, *ante*, p. 42.

16.—(1) Where—

Application to existing railways, etc.

(a) a special Act, order, scheme, or certificate confirmed by or having the force of an Act of Parliament relating to a railway company, passed or confirmed before the commencement of this Act, incorporates sections seventy-eight to eighty-five, inclusive, of the Railways Clauses Consolidation Act, 1845, and does not prescribe any distance in lieu of the distance of forty yards mentioned in section seventy-eight of that Act; or

(b) a special Act relating to a railway company, passed before the commencement of this Act, does not incorporate the said sections, but contains provisions similar thereto, and by the provision similar to the said section seventy-eight prescribes a distance of forty yards;

the Act, order, scheme, or certificate shall, as from the commencement of this Act, take effect as if the provisions which by this Part of this Act are to be substituted for the said sections seventy-eight to eighty-five were substituted for those sections as incorporated in the Act, order, scheme, or certificate or for the similar provisions contained in the special Act as the case may be, and as if the Act, order, scheme, or certificate incorporated or included the First, Second, and Third Schedules to this Act, subject, however, to the provisions hereinafter contained in this section.

(2) If at the commencement of this Act minerals lying under the outer area of protection are being worked by a mine owner, he shall, within one month after the commencement of this Act, give such notice as would after the commencement of this Act have been required to be given before such minerals were commenced to be worked, and, if such notice is so given, it shall be deemed for the purposes of the provisions of section seventy-eight of the Railways Clauses Consolidation Act, 1845, as amended by this Act, to have been given more than thirty days before the date on which it is in fact given, and the minerals worked before the notice is given shall, for the purposes of the same provisions, be deemed to have been worked since the expiration of those thirty days.

(3) Any mine owner shall be liable to contribute towards the

expenses properly incurred by the railway company subsequent to the commencement of this Act in making good damage caused to any railway or works of the company by any working of minerals within the six years immediately preceding the commencement of this Act in like manner as if this Act had been in force at the date of such working; but, save as aforesaid, the mine owner shall be relieved of all liability to the company with respect to the working of any minerals prior to the passing of this Act, except a liability arising under an arrangement with the company.

The provisions of subsections (2), (3), (4), (5) and (6) of section 79A of the Railways Clauses Consolidation Act, 1845, as amended by this Act, shall apply in respect of the liability of a mine owner under this subsection in like manner as they apply in respect of his liability under that section.

(4) Nothing in this section shall—

(a) take away, diminish or prejudicially alter or affect any estate right or interest in minerals which may have been acquired by a railway company before the commencement of this Act under or by virtue of any express provision in any deed or contract, or under or by virtue of the exercise of their powers under sections seventy-eight to eighty-five of the Railways Clauses Consolidation Act, 1845, or any right of support from minerals which any such company may have so acquired, or any compensation paid or payable by any such company in consequence of the exercise before the commencement of this Act of any such powers as aforesaid; or

(b) affect any agreement subsisting between a railway company and a mine owner or a royalty owner at the commencement of this Act with regard to the working of, or the leaving unworked, minerals lying under or near to any railway or works of the company, so long as the agreement continues in force, and any such agreement shall, notwithstanding anything in this section, continue in force until determined by effluxion of time, or by the exercise of any power to determine it conferred by the agreement, nor shall anything in this section prevent the entering into a new agreement.[1]

[1] Compare section 13, *ante*, p. 42, as to the rights of a railway company or other statutory undertaking to support upon an application for a right to work minerals under the provisions of this Act or the Mining Industry Act, 1926.

Application of Part II to Scotland.

17. This Part of this Act shall apply to Scotland, subject to the following modifications :—

(a) For references to the Railways Clauses Consolidation Act, 1845, and to sections seventy-eight to eighty-five thereof, there shall be substituted references to the Railways Clauses Consolidation (Scotland) Act, 1845, and to sections seventy-one to seventy-eight thereof :

(b) of the substituted provisions, that numbered 85c shall not apply, and of the remaining provisions, those numbered 78, 78A, 79, 79A, 79B, 80, 81, 82, 83, 84, 85, 85A, 85B, 85D and 85E, shall respectively be numbered 71, 71A, 72, 72A, 72B, 73, 74, 75, 76, 77, 78, 78A, 78B, 78C and 78D, and the reference to section 78 in section sixteen of this Act and references to section 79A both in that section and in the said substituted provisions shall be construed as references to section 71 and to section 72A, respectively :

(c) for the reference to an arbitrator, there shall be substituted a reference to an arbiter.

PART III.

GENERAL.

Short title, commencement, and extent.

18.—(1) This Act may be cited as the Mines (Working Facilities and Support) Act, 1923.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-four.

(3) This Act shall extend to Great Britain.

SCHEDULES.

FIRST SCHEDULE.

Section 15.

PERCENTAGE OF CONTRIBUTION.

Depth in Yards.	Percentage.	Depth in Yards.	Percentage.
160 - - -	Nil.	270 - - -	21
170 - - -	3	280 - - -	23
180 - - -	5	290 - - -	24
190 - - -	8	300 - - -	25
200 - - -	10	350 - - -	30
210 - - -	12	400 - - -	35
220 - - -	14	450 - - -	40
230 - - -	15	500 - - -	45
240 - - -	16	550 - - -	50
250 - - -	17	600 - - -	55
260 - - -	19	650 and over -	60

The percentage at intermediate depths to be in proportion.

Section 15.

SECOND SCHEDULE.

RULES FOR ASCERTAINING AREA FOR THE PURPOSE OF COMPUTING MAXIMUM LIABILITY OF MINE OWNER IN RESPECT OF AUTHORISED WORKINGS.

1. The area shall extend laterally on each side of (but not including) the inner area of protection to the following distance therefrom:

If the depth of the seam is 160 yards or under - - - -	Nil.
If the depth of the seam exceeds 160 yards, but does not exceed 170 yards - - - - -	1½ yards.
If the depth of the seam exceeds 170 yards, but does not exceed 180 yards - - - - -	2½ yards.
If the depth of the seam exceeds 180 yards, but does not exceed 190 yards - - - - -	4½ yards.
If the depth of the seam exceeds 190 yards, but does not exceed 200 yards - - - - -	5½ yards.
If the depth of the seam exceeds 200 yards, but does not exceed 210 yards - - - - -	7 yards.
If the depth of the seam exceeds 210 yards, but does not exceed 220 yards - - - - -	8 yards.
If the depth of the seam exceeds 220 yards, but does not exceed 230 yards - - - - -	9 yards.
If the depth of the seam exceeds 230 yards, but does not exceed 240 yards - - - - -	9½ yards.
If the depth of the seam exceeds 240 yards, but does not exceed 250 yards - - - - -	10 yards.
If the depth of the seam exceeds 250 yards - - - - -	To a line descending outwards from the railway or works at an angle of one horizontal to five vertical from a point on the boundary of the railway or works at rail level until the depth of 650 yards is reached and thence descending vertically.

2. The area shall extend longitudinally for a distance co-extensive with the part of the railway or works upon which expenditure has been incurred in making good the damage, together with a length beyond that distance at either end thereof equal to one-half of the mean depth of the seam or seams in question.

THIRD SCHEDULE.

Section 15.

RULES FOR DETERMINING PERCENTAGE OF CONTRIBUTIONS TO ADDITIONAL EXPENSES FOR DAMAGES PAYABLE BY A COMPANY.

1. The percentage shall be one hundred if the specified minerals do not extend beyond the boundary of the protected works, and shall diminish by one for every one-and-a-half yards by which the specified minerals extend beyond that boundary on each side thereof.

2. If the specified minerals extend to one hundred and fifty yards or more beyond such boundary, no payment shall be due by the company.

3. If the specified minerals extend further from such boundary on one side of the railway than on the other, they shall, for the purposes of this schedule, be deemed to extend beyond such boundary for the mean of such distances on both sides of the railway.

MINES (WORKING FACILITIES AND SUPPORT) ACT, 1925.

[15 & 16 GEO. 5, c. 91.]

Amendment of Part I of 13 & 14 Geo. 5, c. 20 as to the payment of money into Court.

An Act to amend Part I. of the Mines (Working Facilities and Support) Act, 1923, with respect to the payment of money into Court. [22nd December 1925.]

1.—(1) Where under Part I. of the Mines (Working Facilities and Support) Act, 1923 (hereinafter referred to as the principal Act), the Railway and Canal Commission have determined that a right should be granted subject to the payment of compensation or consideration, the Commission may in any case where they think fit—

(a) where the amount of the compensation or consideration has been determined by them, order the payment into Court of the whole or any part thereof;

(b) pending the determination of the amount of the compensation or consideration, order the payment into Court of such sum on account thereof as the Commission think fit.[1]

(2) Money required to be paid into Court under the principal Act or this Act shall, subject to rules made under Part VI. of the Supreme Court of Judicature (Consolidation) Act, 1925, be paid into the Supreme Court, and shall be subject to the Acts, rules and orders relating to funds in the Supreme Court, except that it may, subject to rules made under the said Part VI., be paid out on the order of the Railway and Canal Commission :

Provided that the Commission shall not make an order for payment out of money in any case where it appears to them that the question of title involved is one which would more properly be dealt with by the Supreme Court.

(3) In the application of this Act to Scotland the Court of Session shall be substituted for the Supreme Court, Act of Sederunt shall be substituted for rules made under Part VI. of

the Supreme Court of Judicature (Consolidation) Act, 1925, and references to payment into court shall be construed as references to consignation.

[1] The practice of the Court has varied in the matter of the payment of compensation. Prior to and including the case of *Re J. & J. Charlesworth, Ltd.* (1926), 42 T. L. R. 512, the Court permitted solicitors for the applicants to control the payment of the compensation and on receipt of funds from the applicants to pay persons entitled as and when the coal was worked. The payments were usually made half yearly.

Subsequently the Court ordered that the moneys due by way of compensation should be paid directly into Court.

In the case of *Re The Butterley Co., Ltd.* (unreported, Order July 16, 1930), the Court sanctioned the immediate payment into Court of a capital sum representing the present value of the minerals the working whereof was sanctioned by the order, which sum was based upon the present value of the minerals over a period of years calculated on a 5 per cent. table. And see the Rules applicable to the Railway and Canal Commission (S. R. & O. 1926, No. 910), *post*, p. 157.

Short title.

2. This Act may be cited as the Mines (Working Facilities and Support) Act, 1925, and the principal Act and this Act may be cited together as the Mines (Working Facilities and Support) Acts, 1923 and 1925.

MINING INDUSTRY ACT, 1926.

[16 & 17 GEO. 5, c. 28.]

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An Act to make provision for facilitating the working of minerals and the better organisation of the coal mining

industry, and with respect to the welfare of persons employed therein, and for other purposes connected with that industry. [4th August 1926.]

PART I.

PROVISIONS FOR FACILITATING THE RE-ORGANISATION OF THE COAL MINING INDUSTRY.

Power to prepare and submit to Board of Trade amalgamation and absorption schemes.

1.—(1) Where with a view to the more economical and efficient working,[1] treating, or disposing of coal the owners of two or more undertakings consisting of or comprising coal mines agree to amalgamate their undertakings either wholly or partially, they may prepare and submit to the Board of Trade a scheme (hereinafter referred to as an amalgamation scheme) framed in accordance with the provisions of this Part of this Act.[2]

(2) Where the owner of any such undertaking, or where the owners of two or more such undertakings who have agreed to amalgamate, consider that in the interests of the more economical and efficient working, treating, or disposing of coal it is expedient that one or more other such undertakings, the owners of which are unwilling to agree to amalgamate or to agree to the proposed terms of amalgamation, should be absorbed wholly or partially by the first mentioned undertaking, or by the amalgamated undertaking, as the case may be, the owner or owners may prepare and submit to the Board of Trade a scheme (hereinafter referred to as an absorption scheme) framed in accordance with the provisions of this Part of this Act.[3]

(3) In this Part of this Act—

(a) companies whose undertakings are to be amalgamated are referred to as constituent companies;[4]

(b) a company whose undertaking is to be absorbed is referred to as an absorbed company;[5]

(c) a company, whether or not an amalgamated company, in which any other company is to be absorbed is referred to as the principal company;[6]

(d) " partial amalgamation " of undertakings includes the amalgamation of parts of undertakings and arrangements for the joint exercise of powers of working, treating, or disposing of coal, or powers incidental or ancillary thereto, or for the conduct of any business or operations in the common interest of the constituent companies, or the vesting in a separate company of the control of the constituent companies, and " partial absorption " has a corre-

sponding meaning, except that no partial absorption scheme shall, without the consent of the owner of the absorbed company, provide for the separation of the treating or disposing of coal from the working thereof, or, in the case of an undertaking of which the primary object is not coal mining, provide for the separation from the undertaking of any coal mine worked as ancillary to such primary object.[7]

1 "*More economic and efficient working*" (*a*).

This includes the various improvements referred to under the Mines (Working Facilities and Support) Act, 1923, and also (*inter alia*)

Increased marketing efficiency;
Improved facilities for extending existing markets;
Reduction of selling costs;
Elimination of barriers;
Joint selling undertakings;
Improved financial resources as the result of an amalgamation;
Pooling of wagons;
Reduction of overhead charges;
Stabilisation of prices and markets.

2 The keynote of this sub-section is the more economic and efficient working, treating and disposing of coal, and this condition precedent applies to any scheme under Part I of this enactment.

It will be noted that this sub-section applies to the owners of two or more colliery undertakings only and does not apply to any undertaking which is not in fact a coal mine, or a constituent part or parcel of a coal mine. This is a most important distinction. (See notes to section 1, sub-section 3 (d).) There is a distinction between sub-section 1 and sub-section 2 in that the provision of the latter sub-section applies *inter alia* to one colliery undertaking only. Owners of such undertakings would include shareholders, so that in the case of a limited liability company where an amalgamation is proposed with a single colliery proprietor, it will be necessary to obtain the approval of the shareholders to such a scheme in accordance with the provisions laid down in the company's articles of association, before a scheme could properly be submitted to the Board of Trade for approval. The preparation of any scheme under this Act requires to be carefully considered and drafted, and would be similar in form (though more voluminous) to applications which are now made to the Board of Trade under the provisions of the Mines (Working Facilities and Support) Acts, 1923-1925, as amended by Part II of this enactment. In practice the necessary pleadings would consist of two documents: (a) the scheme; (b) the application for its approval.

As an amalgamation scheme may be total or partial, the inclusion of the provision of section 2 in the case of total amalgamation, and section 4 in the case of a partial amalgamation scheme, must be considered.

Sections 5, 6, 7, 8 and 9 should be carefully considered as to their effect on any proposed amalgamation scheme, whether total or partial, under this sub-section, particularly with reference to section 7, sub-section 2 (b), namely, that the Railway and Canal Commission have a statutory duty in approving a scheme, to satisfy themselves that it is in the national interest, and section 8, as to the right of persons employed in any such undertakings to be heard by the Commission on the question whether the scheme is in the national interest.

As this sub-section is permissive only there is nothing in the Act to prevent owners of two or more collieries from amalgamating privately without reference

(*a*) See *Re Amalgamated Anthracite Collieries, Ltd.* (1927), 43 T. L. R. 672; *Re Denaby and Cadeby Main Collieries, Ltd.* (1927), 43 T. L. R. 322.

to the Board of Trade, but in such a case they would not obtain the privileges referred to in section 5, sub-section 2, namely, that no stamp duty is payable on an amalgamation scheme, and under section 9, that the provisions of the Mines (Working Facilities and Support) Act, 1923 (Part I), can be applied by the Railway and Canal Commission to an application for approval of an amalgamation scheme under this sub-section.

3 This sub-section applies to one or more owners of colliery undertakings.

A single colliery undertaking, whether owned by one individual or two or more individuals, or by a limited liability company, can therefore put forward a scheme for the amalgamation of one or more colliery undertakings, which are unwilling to agree to an amalgamation scheme, or to amalgamate at all.

This sub-section does not in any way lessen the powers granted by sub-section 1 to agreed amalgamation schemes, and under sub-section 2 once two colliery proprietors have agreed to amalgamate they may take advantage of sub-section 2 in order to bring into the scheme any colliery concerns who refuse to join in a proposed amalgamation scheme.

It will be observed that the refusal to amalgamate is limited to an absolute refusal or alternately to a refusal as to the proposed terms of amalgamation. There is no territorial limit to the proposals contained in this sub-section, and subject to the condition precedent contained in it being satisfied, the smallest colliery undertaking in the country could prepare a scheme for a wholesale amalgamation with other prosperous undertakings. This absorption may be whole or partial. The onus of proof that any scheme is for the more economical and efficient working, treating or disposing of coal is on the applicant. The question of national interest has also to be considered in this direction before an Order would be made by the Railway and Canal Commission on such an application.

This sub-section gives rights to colliery undertakings which are entirely novel, and unlike the scheme considered under sub-section 1 no scheme could be carried out without referring the scheme to the Board of Trade.

Under both sub-sections 1 and 2 any scheme, if approved by the Board of Trade, as showing a *prima facie* case for economy in accordance with the provisions of these sub-sections, must be forwarded to the Railway and Canal Commission for its approval. Sections 6 and 7 should be considered in this direction.

4 *Constituent Companies.*—These are the undertakings referred to under sub-section 1, where the amalgamation has been agreed between the parties and only awaits the approval of the Board of Trade and the Order of the Commission.

5 *Absorbed Companies* are those the subject of the provision of sub-section 2 who are unwilling, for the reasons set out in that sub-section, to agree to an amalgamation scheme.

6 *Principal Company.*—This term applies both to a single undertaking making an application under sub-section 2 of the Act, or to constituent companies who are making an application under both sub-sections 1 and 2 of the Act. Constituent companies may therefore include a principal company within the meaning of the Act, but a single undertaking cannot be other than a principal company.

7 It is quite clear from the sub-section that partial amalgamation, namely, an amalgamation under sub-section 1, includes the amalgamation of all works which may at the time of the proposed amalgamation be part and parcel of a colliery undertaking, namely, by-product, coking and other works, and selling agencies. But on the drafting of sub-section 3 (d) it would appear that whilst any such works are included in a colliery undertaking they would come within the provision of sub-section 1, yet if they should not be included in a colliery undertaking, namely, if they are separate and distinct undertakings, they

would not come within the definition in sub-section 1, namely, "undertakings consisting of or comprising coal mines," and would be excluded. In accordance with the above definition it would therefore appear that by-product works and selling agencies and similar undertakings, if not part of an undertaking within the meaning of the Act, namely, a colliery, cannot be the subject of a separate amalgamation or absorption scheme.

The reference to the vesting or control of constituent companies in a separate company, referred to in this sub-section, can only mean that a separate company after a scheme has been approved and an Order granted becomes an undertaking within the meaning of sub-section 1 on which undertaking further schemes, if desired, could then be based. In connection with an amalgamation scheme, the conduct of any new businesses or operations can, in accordance with the provisions of this sub-section, be included as part of the scheme. But on a true construction of the Act it would appear that such businesses or schemes cannot include distinct and separate ancillary undertakings in existence previous to the amalgamation or absorption schemes if not part and parcel of a colliery undertaking.

With reference to the exception to this sub-section, a partial absorption scheme is further limited by the fact that the consent of an owner of an absorbed company which under the definitions at sub-sections 1 and 3 (b) must be a colliery undertaking, must be obtained for the separation of the treating and disposal of coal from its working.

Regarding the limitation set out in the last paragraph of sub-section 3 (d), after the words "or, in the case of," it would appear that this limitation is difficult to construe, because an undertaking, as previously stated, must be a colliery undertaking in accordance with the provisions of sub-section 1, and as the whole of section 1 is drafted on the basis of that definition, an undertaking the primary object of which is not coal mining, is not an undertaking within the meaning of this section or of the Act, and therefore no such undertaking comes within its provisions. These words therefore appear to be both superfluous and contradictory, unless the intention of the Legislature was to make perfectly clear the fact that coal mines and nothing else were the subject of any proposed schemes.

Contents of total amalgamation schemes.

2. A total amalgamation scheme under this Part of this Act may contain such provisions as may be necessary or expedient for giving effect to the objects of the scheme, and in particular, but without prejudice to the generality of the foregoing provision—[1]

(a) may provide either for the constitution and incorporation of a new company, or companies, under the Companies Acts, 1908 to 1917, with or without the dissolution of all or any of the constituent companies, and the transfer to the new company of the undertakings of the constituent companies, or the distribution thereof amongst the new companies and such of the constituent companies as are not dissolved, or for the continuance (with or without change of name) of one or more of the constituent companies, and the dissolution of the other constituent companies, and the transfer of their undertakings to the continued company or the distribution thereof amongst the continued companies [2];

(b) may provide for vesting in the new or continued company or any of the new or continued companies any or all

of the property, rights, powers, duties and liabilities of the constituent companies [3];

(c) may provide generally as to the terms and conditions of amalgamation, and for the winding up of the constituent companies or such of them as are to be dissolved, including the allocation to holders of securities of the constituent companies, in substitution therefor and in satisfaction of all claims arising thereunder, of such securities of the new or continued company or any of the new or continued companies and of such amounts as may be specified in the scheme [4];

(d) may make such provision as may be necessary with regard to the share and loan capital of the new or continued company or companies, including provision for increasing all or any of the existing classes of loan or share capital of any such company, or creating new classes of loan or share capital of any such company, with such rights, priorities and conditions as may be specified in the scheme [5];

(e) may provide for any of the matters for which provision is made by Part V. of the Railways Clauses Act, 1863 [6];

(f) may make such incidental, consequential and supplemental provisions as appear necessary or expedient in order to give full effect to the purposes of the scheme.[7]

[1] Sub-sections (a) to (d) of section 2 were added in committee in the place of clause 2, paragraphs (a) to (d) as originally drafted. The object of these amendments were stated to be twofold, namely :—

(1) To simplify the language of the clause, so that its intention should be expressed more clearly.

(2) To enable a holding company to be formed for the purpose of absorbing subsidiary companies in a total amalgamation scheme as well as in a partial amalgamation scheme or in an absorption scheme.

This section should be read in conjunction with section 1, so far as it refers to total amalgamation.

[2] The only type of corporation which can take advantage, as a holding, parent or principal company, of the advantages provided for by this sub-section, is or are a company or companies formed under the provisions of the Companies Acts, 1908-1917. As the Companies Acts, 1908-1917 are repealed, the effective statute will be the Companies Act, 1929. A private partnership is therefore excluded. The object of this provision is obvious; namely, that the publicity necessary to registration and the filing of annual returns to the Registrar of joint stock companies would result in confidence being established not only to shareholders or persons financially affected by an amalgamation scheme, but also to employees who are directly affected by a suggested change of employer. The fact that in the case of private companies the returns required under the Companies Acts are not so strenuous as those required to be filed in the case of a public company, would result in no undue publicity, if the amalgamation

was made between two privately owned concerns, which were not registered under the Companies Acts prior to amalgamation.

If a new company is formed in order to take over several constituent companies without dissolution, it is suggested thot the parent or holding company, once the amalgamation scheme had been put on foot, would find many difficulties arising out of the constitution of the constituent companies, which would negative the good results which would be expected from such an amalgamation, and the provisions of section 7, sub-sections 2 and 4, which are intended to overcome such difficulties, could only be applied after the scheme had been forwarded to the Board of Trade and had become an entity. It is suggested that in an amalgamation of any size (using the word " amalgamation " in the narrow sense of a union of two or more companies), it would be advisable to wind up the constituent companies, on the basis of an issue to the shareholders of securities in the new company, leaving recalcitrant shareholders to take advantage of the provisions of section 7, sub-section 2 (b), as to payment in cash for their holding. The most effective method of keeping on foot the personality of constituent companies without dissolution would be by means of an out-and-out sale to the holding company for cash, but it is doubtful if the Act really contemplates a cash transaction, apart from the provisions of section 7, sub-section 2 (b), but there is nothing in the Act which forbids it. The *transfer* to a new company of the undertaking of a constituent company would presumably refer to the steps necessary to carry this out at law in the case where there is no dissolution, whereas the *distribution* of the undertaking of a constituent company would appear to refer to a winding up and dissolution of a constituent company before the amalgamation is carried through, subject to the Court's approval thereto. In order effectively to carry through a winding up, a dissolution is practically essential. The whole sub-section is one of some difficulty. It is quite clear that where the parent company is an existing company, this company may continue to exist as an entity (with or without change of name) with the addition to its undertaking, of the undertakings of one or more constituent companies, which may be subsequently dissolved in furtherance of a scheme. This applies equally to the case where the amalgamation is arranged between two or more companies which may continue to trade without change of name. It would, in fact, appear that a working agreement between two companies would come within the provisions of this sub-section, at any rate, if the agreement included the absorption and dissolution of a constituent company or an absorbed company. The parent company under this sub-section is a principal company within the meaning of section 1, sub-section 3 (c).

[3] This sub-section obviously gives rise to difficulties, owing to the fact that there will be parties outside the amalgamation scheme who may be affected by it. Royalty owners, surface owners, lessors, and licensors may find that their leases or agreements, which were quite suitable for the working of a seam or a mine before absorption, may be quite unsuitable after the amalgamation has been effected. Agreements as to joint user of railways, erection of barriers between adjacent royalty areas, working agreements between collieries and many similar arrangements will be affected by any amalgamation scheme in pursuance of the Act. In case of dispute the remedy is for the new or principal company to apply to the Railway and Canal Commission in accordance with the provisions of section 13, sub-section 2, which are amply full and effective. It would appear that a party to an agreement other than a colliery company—for instance a lessor of minerals—who finds his interests are being, or will be, adversely affected by a scheme of amalgamation, would be an interested party and have a *locus standi* as an objector under the provisions of section 6, or section 13, sub-section 2, but there apparently is no provision for a lessor or any such interested person to originate proceedings *de novo*. His *locus standi* might be in issue, but the point is not free from doubt.

[4] In order to effectively carry through a dissolution of any company in furtherance of a scheme, the provisions of the Companies Act, 1929, regarding

the winding up of a joint stock company must be complied with, and also the particular provisions contained in the company's own Memorandum and Articles of Association with reference to a winding up of the company's affairs must be fully observed. Any such winding up should be carried through *subject* to the approval of the Court thereto.

The expression " securities " contained in this sub-section includes stocks and shares in accordance with the definition set out at section 25, and as the reference in this sub-section is to the " allocation to holders of securities " in constituent companies of securities in new or continued companies, it would appear that the securities referred to only apply to stocks or shares (including debenture stock), and the allocation of a cash payment in satisfaction of claims arising on an amalgamation scheme would presumably not be included in the expression " securities " as defined therein.

5 All questions relating to the capital of new or continued companies are considered in this sub-section. The drafting is sufficiently wide to include reduction of capital, if this is desired, and provision is made for increasing both loan or share capital existing at the date of the amalgamation scheme, and also for the creation of new classes of loan or share capital in furtherance of the scheme. The scheme must specify what rights, priorities and conditions are proposed regarding the issue of new capital.

The rights of stock or share holders in a continued or principal company must be strictly observed in carrying out any such scheme, and there is nothing contained in this section which can be interpreted as derogating from the rights of existing shareholders. Unless the scheme meets with the approval of existing shareholders in a *principal company*, it will be doomed to failure, as the necessary majority will not be secured in order to vary their capital rights, and without the shareholders' sanction a scheme cannot be successfully presented to the Board of Trade for approval. On reference to section 7, sub-section 4, it might be considered that a scheme can be presented to the Railway and Canal Commission for approval overriding the opposition of shareholders. This provision, however, would not apply to any suggested amalgamation originated by a continuing or principal company until it had been presented to the Board of Trade, for the reason that it would not become a scheme until it had been so presented, and it would not be presented if a majority of shareholders of the company originating it as a continued or principal company, refused their consent to an alteration of the share or loan capital adverse to themselves. Section 7, sub-section 4, is of great help in the case of an adverse minority of shareholders in a principal or continued company, and of all or any of the shareholders in a constituent company proposed to be amalgamated or dissolved. Their opposition would arise as from or after the time when the scheme had become an effective scheme for presentation to the Board of Trade by a principal company for approval. Section 7, sub-section 2 (b), contains a provision as to the purchase for cash by an amalgamated or principal company of the holdings of a shareholder who successfully opposes the scheme on the grounds that the proposed terms of allocation are unfair. The Railway and Canal Commission have to satisfy themselves that the proposed terms of allocation are in fact unfair before a statutory purchase for cash can be effected.

6 The provisions of Part V of the Railways Clauses Act, 1863, are by reference incorporated in the present statute. The sections most likely to be of assistance in forwarding an amalgamation scheme are as follows :

Section 39.—Acts relating to dissolved companies to apply to an amalgamated company.
Section 40.—Saving debts and claims of dissolved companies.
Section 41.—Saving conveyances, contracts, etc.
Section 42.—Causes and rights of action reserved.
Section 43.—Actions not to abate.
Section 44.—Saving commissions and awards relating to dissolved companies.
Section 45.—Unexecuted works of dissolved companies may be completed.

Section 46.—Contracts for land entered into by dissolved companies to be executed.
Section 47.—Application of money paid into bank or trustees.
Section 48.—Officers of dissolved companies to be accountable for books.
Section 49.—Officers of dissolved companies to be officers of amalgamated companies.
Section 50.—Books, etc., to be evidence.
Section 51.—Resolutions of dissolved companies to remain in force.
Section 52.—Payment of calls.
Section 53.—Registers, books and certification relating to dissolved companies to subsist until replaced.
Section 54.—Byelaws to remain in force.
Section 55.—General saving rights and claims.

The incorporation of the Railways Clauses Act, 1863, is permissive only. At the same time, this sub-section is one which, properly applied, will be of considerable assistance in overcoming administration difficulties which may arise in the completion of an amalgamation scheme. A similar provision is contained in section 3 regarding total absorption schemes.

[7] This is a general section which speaks for itself. It is sufficiently widely drawn to include practically any point of difficulty arising in a scheme which is not covered by the other provisions of section 2.

As an example of an application for a total amalgamation scheme for approval by the Court, see *Re Amalgamated Anthracite Collieries, Ltd.* (1927), *ante*, p. 68.

Contents of total absorption schemes.

3. A total absorption scheme under this Part of this Act may contain such provisions as may be necessary or expedient for giving effect to the objects of the scheme, and in particular, but without prejudice to the generality of the foregoing provision—[1]

(a) may provide for vesting in the principal company the property, rights, powers, duties and liabilities of every absorbed company [2];

(b) may provide for the consideration to be given to the absorbed company or several absorbed companies and generally as to the terms and conditions of the transfer, and may provide for the consideration consisting in whole or in part of securities of the principal company, and for that purpose may provide for increasing all or any of the existing classes of loan or share capital of the principal company, or creating new classes of loan or share capital of that company, with such rights, priorities and conditions as may be specified in the scheme [3];

(c) may provide for the winding up of the absorbed company or companies, and may provide on any such winding up for the holder of securities of any absorbed company receiving, in substitution therefor and in satisfaction of all claims arising thereunder, such securities of the principal company forming part of the consideration

for the transfer of its undertaking and of such amounts as may be specified in the scheme[4];

(d) may provide for any of the matters for which provision is made in Part V. of the Railways Clauses Act, 1863[5];

(e) may make such incidental, consequential and supplemental provisions as appear necessary or expedient in order to give full effect to the purposes of the scheme.[6]

[1] A total absorption scheme can only be carried into effect by means of the provisions of this Act, in which it is distinguished from an amalgamation scheme. In Committee it was suggested, and it would appear to have been rightly suggested, that the consideration payable under a total absorption scheme does not include a cash payment except in so far as the provisions of section 7, sub-section 2 (b) may be held by the Commission to apply.

It is a question of construction whether the words "may contain such provisions as may be necessary" contained in section 3, taken in conjunction with the particulars set out in section 3 (a)—(e) (which are not to prejudice the generality of the introductory words set out in the section) are sufficiently wide to give the Railway and Canal Commission power to approve a cash basis of payment. If this is not so, the Commission would not have power to approve a scheme providing for the purchase of an entire undertaking in cash, except in so far as a "holder" of securities referred to in section 7, sub-section 2 (b) might be held to include each shareholder of an absorbed company objecting collectively, and section 3 (e) would be of no assistance in this direction, as the generality of the words contained in it are limited by the other provisions of the section and are dependent thereon.

The Railway and Canal Commission's approval of a scheme is in the form of a statutory consent and not a statutory grant, as is the case under an order made by the Commission upon an application under the Mines (Working Facilities and Support) Acts, 1923-1925, but the actual effect of the difference will in practice be negligible. The principal company must therefore present the scheme complete in every particular to the Board of Trade, for the consent of the Commission, including every necessary provision regarding the transfer of the absorbed company to the principal company. The rights of parties who are not directly affected by the absorption scheme but are interested as third parties, namely (*inter alia*), creditors of the absorbed company, owners of minerals, or other similar interests, are fully protected by section 7, sub-section 1 of the Act. Again, the pleadings will consist of (a) the scheme; and (b) the application for its sanction.

Representatives of the employees of the absorbed company also have a *locus standi* to be heard by virtue of the provision of section 8, but their rights in this direction are limited to the question whether the scheme is in the national interest. Other persons, in addition to persons employed in the undertaking, can also be heard on this question. There is no limitation in section 8 as to persons (other than representatives of employees) having an interest in the absorption scheme in order to give them a *locus*. Public authorities and similar bodies, including railway and canal companies, could therefore be heard in opposition to a scheme, basing their case on the question whether the proposed scheme is in the national interest. By means of section 8 and section 7, sub-section 1, there should be no difficulty in presenting an objection to any scheme by any interested party or parties. This is apart from the provisions of the Mines (Working Facilities and Support) Acts, 1923-25, which may be applied.

[2] The absorbed company has no alternative but to comply. The scheme is not its scheme, but the principal company's scheme. It is suggested that this

provision (a) regarding the vesting of the property and other interests of the absorbed company in the principal company should include the machinery by which it is proposed that the absorption shall be carried into effect. The onus is upon the principal company to show that everything in connection with : (1) The interests which it is proposed shall be absorbed, and (2) the means by which such interests shall be absorbed, are fully disclosed and provided for.

[3] In the case of the consideration which it is suggested shall be given to the absorbed company, the onus of proof is upon the principal company. It must show that the proposed consideration is fair and equitable (section 7, sub-section 2), taking all the circumstances into account, and taking into consideration the provisions of section 7, the principal company should be in the position to support its scheme on all questions of accountancy to the fullest extent. Not only will the comparative value of its share or loan capital be in issue, but the value of the undertaking which it proposes to absorb will also be in issue, so far as it compares with that of the principal company as a method of computing the comparative values of the two concerns. But once the principal company has shown that its scheme is not only fair and equitable, but also in the national interest, the absorbed company's opposition will automatically cease, except in so far as the provisions of section 7, sub-section 2 (b) may apply.

[4] In order to effectively carry through an absorption scheme, a winding up of the absorbed company is practically essential. But as the scheme is that of the principal company, the principal company will have to provide for all the steps necessary consequent upon a winding up. The absorbed company will have to rely on its right to submit objections, which will presumably be in the form of counter-proposals. How far an absorbed company can object to the scheme as a whole will require consideration, but in view of the provisions contained in section 7, the national interest will be the keynote of the policy guiding the Commission in its decisions, and the question of the personal interests of the absorbed company will be limited to the question of price (section 7, sub-section 2 (a) (b)).

[5] Reference should be made to the remarks on the effect of the incorporation by reference to the provisions of Part V of the Railways Clauses Act, 1863, in the Act which appeared at section 2 (e), *ante*, p. 73.

[6] The general powers given herein are limited to the object of giving *full effect* to the scheme, and although this is a very useful provision, in so far as it enables the principal company to make provision for many general matters which would arise on the carrying into effect of an absorption scheme, at the same time it must not be forgotten that nothing can be acquired under this paragraph which is not in principle included in the other provisions of the section. It cannot be used in order to give effect to some proposal which goes outside the intention of the section, considering it as a whole, or the statutory limitation in absorption schemes. It is in order to amplify and assist, but not to extend the earlier provisions of the section, that this paragraph has been included as a general clause in this section. Its intention is quite definitely defined by the words "in order to give full effect to the purposes of the scheme."

Contents of partial amalgamation and absorption schemes.

4. A partial amalgamation or absorption scheme under this Part of this Act may contain such provisions as may be necessary or expedient for giving effect to the objects of the scheme, and in particular, but without prejudice to the generality of the foregoing provision—[1]

(a) may provide by means of the constitution and incorporation of a company, or by the constitution of a joint

committee or otherwise, for the joint exercise of the powers, or the conduct of the business or operations, to which the scheme relates [2];

(b) may provide for transferring to, or conferring and imposing on, the company, joint committee or other body constituted for the purposes of the scheme all or any of such property, rights, powers, duties and liabilities as may be specified in the scheme [3];

(c) may provide generally as to the terms and conditions on which, and the manner in which, the powers are to be exercised, or the business or operations are to be conducted, for the common interest of the companies concerned [4];

(d) may make such incidental, consequential and supplemental provisions as appear necessary or expedient in order to give full effect to the purposes of the scheme.[5]

[1] This section deals with the procedure necessary to carry into effect the provisions which are set out in section 1, sub-section 3 (a). The limitation referred to in that sub-section with reference to the consent of an owner of an absorbed company being required in order to carry into effect any scheme suggesting the separation of the means of distribution or the treatment of coal from the colliery undertaking should be considered.

[2] Provides for the exercise of the powers given in section 1, sub-section 3 (a) by the parties to the scheme. They can exercise those powers by means of :—

(1) The constitution and incorporation of a company.

(2) By the constitution of joint committees or by any other method which will result in proper control of the undertaking being carried out.

It is clear from the wording of the sub-section that an incorporated company is intended, and these would usually be companies formed under the provisions of the Companies Act, 1929. They could, however, be constituted by a special Act of Parliament if this procedure was preferable for any particular reason. Unincorporated companies would apparently not be within the provisions of the sub-section. A joint committee, however, could be incorporated or unincorporated in character, as the words "or otherwise" appear to be in amplification and not in limitation of the formation of the joint committee, and do not limit its constitution to that of an incorporated company.

This sub-section gives the promoters of the scheme and the parties to it full powers of working and carrying the scheme into the sphere of practical business. During the period of transition the constituent companies or bodies would carry on their individual undertakings until the date when the scheme is to be effective; with the exception of the limitation contained in section 1, sub-section 2 (d), it would appear that the companies or bodies affected by the absorption scheme can object to it, but their right to do so is limited by the provisions of section 7, and once the Railway and Canal Commission are satisfied on the question of national interest, their right of objecting to the scheme would disappear.

[3] As the entities which will make up a partial absorption or amalgamation scheme will, owing to the nature of the transaction, be severable from the undertakings who are parties to the scheme, it is obvious that no winding up will be necessary to carry the schemes into effect. It is a question for consideration how far the transfer to the newly constituted body should be absolute or conditional. It is conceivable that a company may be quite

prepared to enter into a partial amalgamation scheme and to allow certain of its undertakings to be taken over by a new-formed company or joint committee *on trial*, but in the event of the scheme being proved to be a failure, the directors may desire that on the newly constituted body giving up the exercise of the powers for which the scheme provides, so much of the organisation as was originally part of the company entering into the amalgamation shall be retransferred to the original company. Means should therefore be taken to provide for such a contingency on any agreed scheme until a period of probation has been successfully passed. Although there is no direct provision in the Act to this effect, it would appear that the compulsory absorption of a part of a company or body should also be made subject to a trial period, the rights of the absorbed company revesting in them if the scheme is a failure, and it is submitted that the wording of this section is wide enough to carry such a trial scheme into effect.

[4] This sub-section deals mainly with matters which are usually included in a company's Memorandum and Articles of Association, and in the case of a company registered under the Companies Act, 1929, the provisions of this statute would apply to the scheme. In the case of a joint committee the powers would have to be very carefully defined.

[5] This is a general section and is similar in form to the sub-sections contained in sections 2 and 3, which have already been considered.

Supplementary provisions as to schemes.

5.[1]—(1) A scheme under this Part of this Act shall not provide for the allocation to any person of securities subjecting the holder thereof to any liability for calls in excess of the liability (if any) to which he was subject as the holder of the securities for which the allocated securities are to be substituted.[2]

(2) No stamp duty shall be payable in respect of any amalgamation or absorption scheme, or on any debentures, or in respect of any share or loan capital of any company issued in pursuance of such a scheme, or on any conveyance, assignment, or transfer of any of the property or securities of any constituent or absorbed company made in pursuance of any such scheme as aforesaid.[3]

(3) Any action taken for the purposes of or in connection with the preparation or submission of a scheme under this Part of this Act shall be deemed to be within the powers of any company, and no such action shall give rise to a right on the part of the holders of any debentures or other securities of a company, or of any persons on their behalf, to enforce the security.[4]

[1] This section deals generally with supplemental provisions for the furtherance of schemes.

[2] This sub-section was necessary in order to protect the interest of shareholders, whether in an amalgamated or absorbed company. No shareholder can suffer any additional liability for calls owing to the substitution of other securities for his existing securities, under any proposed scheme.

[3] This provision will result in a considerable saving being effected in the case of large amalgamation or absorption schemes involving a considerable amount of capital or loan capital.

In the case of stamp duty payable in respect of title or other deeds necessary to give effect to the scheme, the saving in this direction will be an important item in the case of large undertakings being conveyed or transferred.

[4] The effect of this section is to make non-effective the remedies which the holders of debentures or mortgages might have on any step taken in furtherance of a scheme, whether for amalgamation or absorption, which may be in breach of the terms of trust deed, mortgage or other form of security. This section was of great importance in the interest of shareholders or other persons affected by a scheme.

It would appear to be impossible under this section for any company which is a colliery undertaking to contract outside the Act, whether by means of its memorandum of association or otherwise. This sub-section is an answer to any proceedings that might be taken in the Company Court in consequence of any proposed schemes.

For an example of a scheme of partial amalgamation which was sanctioned by the Court, see *Re Denaby and Cadeby Main Collieries, Ltd.* (1927), 43 T. L. R. 322.

Reference of schemes to the Railway and Canal Commission.

6. The Board of Trade shall consider any scheme submitted to them, and shall, if satisfied after communication with such parties interested as they may think fit that a prima facie case is made out that the proposed scheme would promote the more economical and efficient working, treating, or disposing of coal, refer the matter to the Railway and Canal Commission.

This section imposes a statutory duty on the Board of Trade to consider every scheme that is placed before it. The duties of this department are administrative and amongst other matters imposed upon it by this section will be the duty of ascertaining that all the preliminary steps necessary to properly placing the scheme before the Court of the Railway and Canal Commission have been carried into effect.

The provisions set out at section 2 regarding a total amalgamation scheme, section 3 regarding a total absorption scheme, and section 4 regarding a partial amalgamation or absorption scheme, will have to be fully complied with, and the Board of Trade will satisfy themselves that such of these provisions as may apply to any particular application for the approval of a scheme have been fully complied with. The provisions of this section do not in any way relieve the parties to the scheme from themselves complying with all the requirements of the Act and preparing a scheme in as full and complete a manner as possible, before the scheme is submitted to the Board of Trade. There are so many questions arising on any proposed scheme that require the fullest consideration before the scheme can be placed before the Board of Trade, that it is probable that the negotiations and inquiries which will be necessary in order to carry out the requirements of the Act may occupy a considerable time. The consideration and preparation of these schemes involves a considerably longer period of preparatory work than is required in the preparation of an application under the Mines (Working Facilities and Support) Act, 1923, and the Court is of necessity occupied for a longer period in deciding the merits of a scheme than has been the custom in the case of applications under the said Act. The Court has a statutory duty to consider the interests of so many parties, and so many questions affecting the rights in property will have to be discussed that the hearing of the application naturally occupies the time of the Court over a lengthy period. The same remark applies in a lesser degree to the administrative work which the Board of Trade is called upon to perform under the Act. It must be appreciated that the proper presentation of the scheme to the Board of Trade is of the utmost importance, and that the greater the accurancy and care with which a scheme

is prepared, the less will be the period occupied by the Court in hearing the application.

As any scheme presented to the Board of Trade must be forwarded to the Railway and Canal Commission, the Board of Trade have no judicial duties allotted to them under the Act.

There is a statutory duty imposed on the Board of Trade of communicating with such parties interested under a proposed scheme as they may determine to be necessary. In many applications this will involve a considerable amount of preliminary work taking place before the scheme is finally in a fit and proper state to present to the Railway and Canal Commission.

The question of the legal rights of the parties affected by the scheme is a question for the determination of the Court, and the same remark applies to any question of law arising out of the Act, even if a point of law is submitted to the Board of Trade by a party affected by a scheme as an absolute bar to any proposed scheme. The Court would determine the legal merits of any such proposition.

What is a *prima facie* case is a matter which requires consideration. It must be remembered that the national interest is the keynote of the Act; and that the Court can only confirm a scheme if it considers that the terms are fair and equitable to all the persons affected by it (section 7, sub-section 2).

The provisions of the Act setting down the duties of the Board of Trade in this respect lay upon them the duty of satisfying themselves that the proposed scheme will promote the more economical and efficient working, treating and disposing of coal. This is practically a question of national interest, but these words are not used in this particular section. It would therefore appear that a scheme would be a *prima facie* case within the meaning of this section when on presentation to the Board of Trade it appeared that :—

(a) The scheme set out proposals which appeared to promote the economic and efficient working of coal.

(b) That the terms offered to parties affected by it appear to be fair and reasonable.

(c) That the shares, securities or other considerations offered to an absorbed company, in satisfaction of the proposed absorption of their undertaking, appear to be fair and reasonable.

(d) That the constitution and incorporation of any principal company have been properly considered, and all steps necessary to the establishment of such a body have been taken, subject to the sanction of the Court thereto.

(e) That all matters affecting capital (whether in form of share and loan capital) have been properly considered and prepared for the Court's approval.

(f) That all matters affecting the winding up of any companies the subject of a scheme, including the substitution of capital, have been fully considered.

Generally, the Board of Trade would have to be satisfied that every scheme is on the face of it a proper scheme to go forward for approval. The question of the merits or demerits of the scheme, or of any of the matters set out as (a)-(f) above is a question entirely for the Railway and Canal Commission to determine. It is quite conceivable that a scheme which at first sight appeared to be a perfectly proper scheme might break down in Court under cross-examination of the promoter's witnesses. The interests of workmen and other persons employed by any undertaking, whether absorbed or otherwise, would receive the fullest consideration from the Court, and the Act specifically provides for this, as the Court may hear representatives of workmen on the question of national interest (section 8).

The Board of Trade would obviously have to satisfy themselves that any scheme falls within the four walls of the Act, and this question is one which would come within the meaning of the expression " a *prima facie* case," as laid down in this section.

Consideration of schemes by Railway and Canal Commission and effect of confirmation of schemes.

7.—(1) Where a scheme has been referred to the Railway and Canal Commission, the Commission, if satisfied that the scheme conforms to the requirements of this Part of this Act, shall take into consideration all objections to the scheme which may be lodged by any person or by any class or body of persons within such time and in such manner as may be directed by the Commission, and where any objections have been so lodged shall hear any objectors whom they consider entitled to appear.[1]

(2) The Commission, after hearing such objectors as aforesaid, may confirm the scheme either without modifications or subject to such modifications as the Commission think fit, or may refuse to confirm the scheme [2] :

Provided that the Commission—

(a) shall confirm a scheme if satisfied that it would be in the national interest to do so, and that the terms of the scheme are fair and equitable to all persons affected thereby, and

(b) may in particular, if, upon an objection lodged by the holder of any securities in a constituent or absorbed company to whom by the scheme securities in the amalgamated or principal company are allocated in substitution therefor, they are satisfied that the substitution would not be fair in his case, order that in lieu of the proposed substitution his existing securities shall be purchased at a price to be determined in such manner as the Commission may direct.[3]

(3) The Commission may give such directions as they think fit as to the publication of advertisements of schemes, the giving of notices and the holding of meetings of companies affected, and of any classes of shareholders and debenture holders of any such companies.[4]

(4) A scheme under this Part of this Act shall, when confirmed by the Commission, be binding on all persons and the memorandum and articles of any company and any other instrument regulating its constitution or capital shall, in so far as they may be affected by the scheme, have effect subject thereto, and the directors of every company affected by the scheme shall cause a copy thereof to be filed with the registrar of companies.[5]

(5) Where any such scheme provides for the substitution of any securities of an amalgamated company or a principal company for securities of a constituent or absorbed company, any trustee or other person acting in a fiduciary capacity, who at the date of the amalgamation or absorption held and was

entitled to hold any securities of the constituent or absorbed company, shall be entitled to hold the securities of the amalgamated or principal company which may be substituted therefor.[6]

(6) Where any such scheme makes provision for additions to existing or the creation of new classes of share or loan capital of any existing company, then, notwithstanding anything in the memorandum or articles of association of the company, the additional capital of each class shall form part of and rank pari passu with the existing capital of that class, and any new class of capital may rank before any existing class of capital.[7]

[1] The Court have a statutory duty imposed upon them to inquire whether the Board of Trade have carried out their administrative duties under section 6, and in addition, to satisfy themselves that any scheme referred to them fulfils the condition precedent laid down in section 1, and that the provisions of sections 2, 3 and 4 are properly incorporated into any particular scheme submitted under each of these respective sections.

The provision of section 7, sub-section 1 regarding the rights of objectors entitled to be heard under a scheme should be read in conjunction with the provisions of section 8. It is submitted that although the Court has a discretion as to the persons they will hear in opposition to any scheme, that such discretion would be exercised in ascertaining the *locus* of any objectors or class of objectors, and on this being proved to the satisfaction of the Commission, such persons would be given the right to appear at the hearing of the scheme.

The notices of objection would be similar in form to those filed in opposition to applications under the Mines (Working Facilities and Support) Act, 1923, and would fully set out the grounds on which the objection is based.

The Court would probably order, in the case of objections being received from several persons representing one interest or similar interests, that one objector should be given leave to appear in opposition as representing a class (but see remarks later on this point) with the object of avoiding costs.

It is submitted that the objections to any scheme, however numerous or substantial they may be, would not alone be sufficient to avoid the actual hearing of the application. The Court has full powers under section 23, sub-section 3, to order security for costs to be paid into Court in order to provide for any payment by way of costs which may be granted against an applicant under a scheme, in favour of an objector or class of objectors. This section also enlarges the powers of the Court in this direction under the Mines (Working Facilities and Support) Act, 1923, and enables it to order security for costs against any applicant under that Act for good cause shown by an objector in the case of an application to work coal or for ancillary rights in connection therewith.

[2] The Court has therefore the fullest possible powers under this sub-section to grant, refuse or amend any scheme subject to the conditions laid down in the proviso thereto, namely :—

The scheme must satisfy two requirements, namely, national interest and fair play to *all parties* affected by it. This part of the Act is based on the fact that a scheme is necessary in the "national interest." The requirements or interests of the promotors of the scheme do not concern the Court at all. That a scheme is in fact in the national interest, it would be necessary to prove *inter alia* that if carried into effect it would result in the "more economical and efficient working, treating or disposing of coal" (section 1, sub-section 1). The interests of objectors or of absorbed companies are not apparently limited by the question of national interest except in so far as their acquisition and consequent loss of rights may be necessary in order to further

the national interest. Their rights are those secured by the provision that the Court must be satisfied that any scheme is fair and equitable to *all persons*. Under this provision the opposition of minority shareholders in an applicant company to a proposed scheme would have to be fully considered and their rights safeguarded. The Court do not define national interest and they do not intend to do so. They consider every case on its merits and then decide whether the application shall be granted or not. As to matters which have been placed before the Court as supporting the proposition that a scheme or grant is in the national interest, see pp. 21, 22, *ante*. The judgments in certain cases are indications as to the attitude which the Court will adopt (*b*).

[3] This is the only reference in the Act to the payment of cash as a consideration for the sanctioning of a scheme. The Act has been built upon the foundation of shares being the tender to be offered to shareholders affected by a proposed scheme. This provision is, however, very necessary, and it will probably be relied on to a considerable extent by objectors in applications under this part of this Act. The clause has been drafted in the singular number "the holder of any securities," and "his case," and if each individual shareholder in any constituent or absorbed company took exception to the terms of amalgamation or absorption, each case would on a strict interpretation of this clause have to be heard and determined separately from that of every other shareholder. In practice, however, it is probable that one member of a class would be heard on the merits of the objection and the order would be formally made applying the terms of purchase to each individual case. If other procedure was adopted the hearing of schemes might be lengthened unduly. Of course, if a member of a class of shareholders required a different basis of assessment to be adopted in arriving at the cash value of his holding, such a case would have to be dealt with on its merits, apart from the assessment of the other shareholders of his class.

[4] The Commission has in the past adopted the practice of ordering :—

(1) *Notices* to be posted at convenient spots or public buildings situated near the area affected by any application. It is presumed that this procedure will be continued, the number of places where the notices would be posted being increased.

(2) *Advertisements* to be inserted in the principal newspapers circulating in the districts affected by the application and an insertion in the *Colliery Guardian*. It is presumed that the practice will be continued. Possibly an insertion in a financial paper might with advantage be included in the order.

(3) *Sending notices*. Serving notices of the application to the principal persons affected by it. This practice could be usefully continued. At the same time the Court presumably will desire to continue the procedure already adopted in sending notices of and advertising meetings of shareholders and debenture holders, and arranging for the holding of these meetings. The Court requires satisfactory evidence as to the regulations laid down in the company's Articles of Association with reference to the holding of meetings and the notices thereof, and the procedure to be adopted regarding the passing of resolutions at such meetings. Evidence of facts have in the past been given by affidavit at the summons for directions held in open Court. This procedure has been found to give satisfaction, and will presumably be followed. The confirmation of a scheme by the Court would be more effective than the passing of a special or extraordinary resolution by the company concerned. Every person would be bound by the confirmation of the Court, and minority shareholders and creditors and other interested parties would have no remedy once the

(*b*) See *Re Denaby and Cadeby Main Collieries, Ltd.*, *ante*, p. 68; *Re Amalgamated Anthracite Collieries, Ltd.*, *ante*, p. 68.

scheme had been confirmed. It will be noticed that the only "instrument" referred to in this sub-section which shall have effect subject to the scheme is the instrument regulating its constitution and capital. No reference is made therein to such documents as leases, licences and agreements with third parties not parties to the scheme. Are they brought into the provisions of a scheme in so far as it may affect them (for instance, by the transfer of their rights and interests to an amalgamated or constituent company) by the words "all persons" contained in sub-section 2 (a) of this section?

5 This sub-section imposes a duty on the *directors of any company* affected by the scheme to file a copy of the scheme as confirmed by the Court with the registrar of joint stock companies. This is a most useful provision and it is necessary not only to keep the files up-to-date, but to give the public generally the fullest information on a search being made of the terms of amalgamation or absorption and the financial position of the company absorbing or amalgamating with the company affected by any such scheme.

6 This sub-section provides the machinery necessary for vesting in the trustee of a constituent or absorbed company the securities of an amalgamated or principal company in place of the securities of such constituent or absorbed company held by him for and on behalf of such company.

7 This sub-section definitely overrides the provision of the memorandum and articles of association of an existing company, with reference to the vital question of capitalisation. At first sight it would appear that this provision is in entire disregard of the fundamental character of a joint stock company. But it will be realised on further consideration that this provision can only apply to an amalgamated company, or principal company, as an absorbed or constituent company would in most cases not require any increase of capital, as it would shortly be absorbed or amalgamated and would disappear as an entity. Actually the shareholders of any company whose capital is to be increased in order to carry into effect the provisions contained in the Act, have the matter in their own hands, as they can stop any proposal for a scheme put forward by their directors by refusing sanction to such scheme in general meeting. In a case of this description the company, as the prime mover in a proposed scheme, would be unable to proceed with the scheme, and could not reach the stage necessary to approach the Board of Trade for its approval. With this power in their hands, shareholders could only blame themselves if they find that a scheme has, on a reconstruction (for this is really the effect of the powers given by the Act) placed them in a worse position than they were in before the reconstruction was effected, so far as their financial position in the company is concerned. The position of existing shareholders can only be adversely affected by the issue of shares ranking in priority to the existing shares, as their other rights as such shareholders are protected by section 5, sub-section 1. The very first question which shareholders should place before their directors as a proposed scheme being considered by a company in general meeting prior to its inaugurating a scheme for presentation to the Court, should be: "How are we, the original shareholders, going to be affected by the scheme? The Act provides for new capital ranking before existing capital, and we cannot prevent this once we have approved of a scheme. How is our position going to be safeguarded, and what guarantees are we going to have that any new capital required for carrying the scheme into effect will not prejudice our existing position?" These are the questions which would occur to a shareholder considering a scheme in its original stages. Once the scheme has been approved in a general meeting of the company and forwarded for the approval of the Board of Trade and sanction of the Court, this section would apply, and it is conceivable that in the national interest the exercise of these rights by a company might be advantageous, although disadvantageous to certain classes of shareholders in the company promoting the scheme.

Representation before Commission of persons employed.

8. Upon the question whether a scheme is in the national interest the Railway and Canal Commission may hear such persons, whether in support of or against the scheme, as they think fit, including representatives of persons employed in any undertakings affected by the scheme.

This section gives the Court full powers regarding the persons to whom they may give leave to attend at the hearing of the application. A question may arise as to the *locus* of an objector under this section, but the manner in which this section has been drawn appears to be wide enough to overcome technical difficulties on the question of *locus* if the objector can bring his case within the four walls of national interest.

The directions regarding the right to appearance of representatives of persons employed in any undertakings, whether affected by an amalgamation or absorption scheme, are absolute. There is no limitation as to the class of persons so entitled to be heard, and separate grades of workmen, or other employees, could be given leave to appear by their representatives. In practice it will probably be found better to have their case put before the Court by their legal representatives, the employees' representatives themselves appearing as witnesses in support of their case.

Power to include in schemes provisions as to working facilities.

9. Any right which might be granted by the Railway and Canal Commission under Part I. of the Mines (Working Facilities and Support) Act, 1923, as amended by Part II. of this Act, may be granted by a scheme confirmed by the Commission under this Part of this Act, and, in so far as any scheme referred to the Commission makes provision for the grant of such a right, it shall be deemed to be a matter referred to them under Part I. of the first-mentioned Act.

The Commission can grant a right to work under section 1 of the Mines (Working Facilities and Support) Act, 1923, or an ancillary right under section 3 of that Act. It should be remembered that the necessity of proving interest in the coal or adjacent coal in order to obtain a right no longer exists owing to the provisions of section 13 of the present Act. Section 2 of the Mines (Working Facilities and Support) Act, 1923, will be of assistance in overcoming difficulties arising under a scheme, especially on the question of boundary agreements. It must, however, not be overlooked that section 2 will probably not apply to cases where the lessees or owners in fee simple of coal who are not also the owners of the surface or in whom the surface is vested, enter into an agreement which for any reasons cannot be put into effect. Section 13, sub-section 2 of the new Act will, however, overcome many difficulties in connection with the revision or cancellation of terms and conditions contained in written documents which interfere with the successful completion of a scheme.

It is, of course, necessary for the scheme to definitely set out the rights which the applicants require, and it would not be sufficient to leave them to be generally discussed on the hearing of the scheme, without the fullest details being set out in the pleadings.

Withdrawal of schemes.

10. A scheme referred to the Railway and Canal Commission may at any time before confirmation thereof by the Commission be withdrawn by the persons by whom it was submitted or, subject as hereinafter provided, by any of them, upon such terms as to costs as the Commission may direct; and at least

fourteen days before confirming subject to modifications any scheme submitted to them the Commission shall give notice of the modifications proposed to be made to the persons by whom the scheme was submitted :

Provided that, if any of the persons by whom the scheme was submitted is willing to proceed with the scheme, the Commission may, if satisfied that it would be in the national interest so to do, direct that any such person may, upon such terms as the Commission consider to be fair and equitable to all persons affected by the scheme, proceed with the scheme as if it were a scheme for absorbing either wholly or partially the undertakings of any of the persons desirous of withdrawing the scheme.

It is obviously the intention of this section to provide for those cases in which a scheme, after presentation to the Commission, is not proceeded with by one or more of the persons responsible for its presentation. This section also provides for the case which will probably be of more frequent occurrence in which all the promoters of the scheme for some reason or another desire to withdraw it from the Commission.

It also provides ample opportunity for any party to a scheme which has not been proceeded with by the other parties to it, to continue with the completion of the scheme before the Commission on the following basis :—

(a) Where the scheme is appropriate, on the basis of an amalgamation, with such modification as may be necessary owing to the withdrawal of one or more of the promoters.

(b) In case in which amalgamation will not be appropriate owing to the particular alternatives in the circumstances of the case, then on the basis of an absorption scheme.

In the case of (a) any proposed modifications have to be notified to the person or persons who were the original parties to the application.

In the case of (b) the national interest is the guiding principle on which the Commission will determine whether any of the persons to the scheme who have not withdrawn from it shall be entitled to continue with the scheme.

The Commission will also have to approve the terms as being fair and equitable, and in particular that they are fair and equitable to the persons who have withdrawn from the scheme, who by so doing make their undertakings subject to an absorption or partial absorption scheme.

It will be observed that this section gives the Commission very wide powers indeed, to be exercised in the national interest.

Application to undertakings owned by firms and individuals.

11. Where an undertaking to which this Part of this Act applies is owned by a firm, or by an individual, or by two or more individuals jointly, the provisions of this Part of this Act shall apply in relation to the undertaking subject to such modifications as may be necessary.

This section is self explanatory and applies the provisions of the Act to private undertakings, partnerships and single ownerships, with such modifications are are necessary, owing to these classes of undertakings differing from limited liability and other public companies.

Powers and duties of the Board of Trade.

12.—(1) If it appears to the Board of Trade that it is the general wish of the owners of any undertakings that the Board of Trade should assist them in formulating or settling the terms of an amalgamation scheme, the Board may give such assistance.[1]

(2) At the expiration of two years from the passing of this Act, the Board of Trade shall make a report to Parliament upon the operation of this Part of this Act, including information as to the extent to which amalgamations and absorptions have taken place among undertakings to which this Part of this Act applies and all such other information and statistics relevant thereto as they may think fit, and the Board shall thereafter continue to make a like report annually.[2]

[1] The provisions of this section are permissive only. The Board of Trade are empowered on the application of the majority of owners of undertakings affected by a scheme, to assist them in putting the scheme on its feet.

Although this is a useful provision, it is possible that the direct assistance given by the Board of Trade might result in a wrong impression being formed as to the merits of the scheme by persons who are not familiar with the duties of the Board of Trade in colliery matters.

[2] This is an administrative question for the Board of Trade. Presumably amalgamation taking place outside the provisions of the Act could properly be included in the report.

On the general application of Part I of this Act it would be advisable to consider the provisions of the Companies Act, 1929, in relation thereto, and in particular the provisions of sections 225 to 260 of that statute in connection with the voluntary winding up of a limited liability company.

Are its provisions in conflict with the provisions of the Mining Industry Act, 1926, Part I; or will the Commission apply the 1926 Act in conjunction with the provisions of the Companies Act, 1929? It is an interesting point for consideration, and it must not be forgotten that the Company Court has jurisdiction in winding up proceedings.

PART II.

WORKING FACILITIES.

Amendment as respects coal of 13 & 14 Geo. 5, c. 20, Part I.

13.—(1) Any person who is desirous of searching for or working, either by himself or through a lessee, any coal may, under and in accordance with Part I. of the Mines (Working Facilities and Support) Act, 1923 (in this Part of this Act referred to as the principal Act), make an application to search for or work the coal, and, on such an application being referred to the Railway and Canal Commission under the principal Act, the Commission may, subject to the provisions of the principal Act, grant the right if they consider that it is expedient in the national interest that the right should be granted to the applicant.[1]

(2) Where the working of any coal, or the working of any coal in the most efficient and economical manner, is impeded by any restrictions terms or conditions contained in a mining lease, or otherwise binding on the person entitled to work the coal, a right to work the coal freed wholly or partially from such restrictions or conditions, or to work the coal on other terms and conditions, may, on an application for the purpose being made and referred to the Railway and Canal Commission

under the principal Act, be granted by the Commission in any case where the Commission consider that it is expedient in the national interest that the right applied for should be granted to the applicant.[2]

(3) An ancillary right may be granted to a person to whom a right of working coal is granted in pursuance of this Part of this Act at the time when such last-mentioned right is granted or at any subsequent time.[3]

(4) The principal Act shall, as respects coal, have effect as if in section five the words " having an interest in any minerals," and " those minerals or any adjacant," and in section six the words " in virtue of which he is entitled to make the application " were omitted therefrom.[4]

(5) For the purposes of this Part of this Act " coal " shall not include lignite or brown coal, but save as aforesaid shall include bituminous coal, cannel coal, anthracite, and all other minerals worked or to be worked therewith.[5]

(6) This Part of this Act shall be construed as one with Part I. of the principal Act, and references in that Part of that Act to a right to work minerals shall include references to any right granted under this Part of this Act.[6]

Part II of the Act, dealing with working facilities, is an amplification and also a modification of the Mines (Working Facilities and Support) Act, 1923, and owing to the experience which practitioners have already obtained in connection with applications under that statute, they can advise with greater confidence on the effect of section 13. But there are two main points of difficulty in that section. Do the words " any person " contained in sub-section 1 in effect repeal section 1, sub-section 1 of the principal Act, and how far are the powers contained in sub-section 2, which give the Court unlimited jurisdiction in all matters appertaining to the variation or cancellation of leases, and matters *ejusdem generis*, amplified by the words " or otherwise," effective so as to give the Court unlimited jurisdiction in all matters appertaining to the variation or cancellation of any written documents entered into between colliery companies and other bodies or persons? The points are of considerable interest. It must always be remembered that the national interest is the key-note of this Act, as it is of the principal Act, and that the Court always gives careful consideration to the national interest before coming to a decision, and the Court weighs in the balance the objection and the application in arriving at this decision.

One further point which must always be remembered is that the Court is the sole judge of fact, and an appeal only lies on a question of law to the Court of Appeal.

[1] The effect of this section is to remove the conditions precedent to any application for working coal which were contained in sub-clauses (a) and (b) of section 1 of the principal Act. If this section is considered in conjunction with sub-section 3 of section 13 of the present Act, it is obvious that any conditions precedent to an application for ancillary rights made in conjunction with an application for working coal are likewise removed. It must be remembered that the amendment of the principal Act only applies to applications for working coal in accordance with the definitions of coal as laid down in sub-section 5 of this section. Applications for working other minerals will be dependent upon the proof of the conditions precedent laid down in clauses (a)

and (b) of section 1 of the principal Act. As the grant of a right to work is dependent upon the compliance by the applicant with the remainder of the provisions of the principal Act, it is probably necessary to comply with the provision of section 4 of that Act, see p. 14, *ante*, but the point is not free from doubt. At the same time it is advisable to plead that the conditions of that section apply, although it is arguable that as " any person " may apply this excludes the necessity of satisfying the Court that " it is not reasonably practicable to obtain the right in question by private arrangement." On the argument put forward by the Attorney-General in the case of *Re Andrew Knowles & Sons, Ltd.* (unreported, Order July, 1927), it would seem that the section granted an entirely new right and the principal Act was not enlarged by section 13 of the Mining Industry Act, 1926. The argument was in the main as follows :—

At the hearing of the *Andrew Knowles Case* the Commission required the evidence of the law officer representing the Mines Department. Sir Thomas Inskip, the Solicitor-General, appeared before the Commission and expressed a view of the Mines Department as to the intention of the Legislature in amending the Mines (Working Facilities and Support) Act, 1923, by the Mining Industry Act, 1926.

The objectors, the Bridgewater Colliery Co., submitted that the Railway and Canal Commission had no jurisdiction to grant the application. The Solicitor-General's submission was as follows :—

Under the Mines (Working Facilities and Support) Act, 1923, the Commission only have jurisdiction to grant an application of this character, that is, an application to work minerals, when there is a danger of them being left permanently unworked.

The applicants, Andrew Knowles, could not contend there is a danger of the minerals being left permanently unworked, but that under the Mining Industry Act, 1926, s. 13, the Commission was clothed with greater jurisdiction as far as coal is concerned, and that that restriction, that the Commission can only have power to grant such an application where there is a danger of minerals being left permanently unworked, is in effect repealed and the Commission now has an unfettered jurisdiction.

Attention was called to a circular which was issued by the Mines Department and relied upon by the applicants, in which they said that the effect of the 1926 Act was to give the Commission the jurisdiction, and that as far as coal is concerned, those words " where there is a danger of minerals being left permanently unworked " do not restrict the Commission because in effect they have been repealed.

The objectors first point was that by section 13 of the Act of 1926 there is an express repeal of certain words in the 1923 Act, but no reference to section 1 at all of the Act of 1923 as being the subject of any repeal.

Secondly, that the whole section would hang together without any need whatever to do what is suggested by the applicants, namely, to read section 1 of the 1926 Act as a repeal of section 1 of the 1923 Act.

Thirdly, the express repeal.

The view which the Mines Department takes is that the new Act of 1926 gives power not merely to receive an application from a person who wants to work minerals which are in danger of being left permanently unworked, but to grant this application. The first section of the 1923 Act is not a restricting clause. Up to the time of the first section of the Act of 1923, there was no power in the Court to grant orders entitling persons to work minerals, unless they had some proprietary rights in them; the power of the Court was not required in those cases, because a person would exercise his rights as owner. Section 1 of the 1923 Act is not cutting down any existing right, but it is an enlarging right. It is giving the Court a new power, and the section is not restricting, it is enlarging, and it is not unimportant to notice that especially when we come to section 4 of the 1923 Act. The power, so far as it goes, which is a new power enlarging the existing powers of the Act, is, in certain circumstances, to enable the Court to make an order. Section 1

does not deal with the procedure or with the application. When you come to the question of application, you have to refer to succeeding sections. Section 1 gives the power to confer, in the manner and subject to the provisions hereinafter appearing, on any particular persons—those are the persons having an interest in the minerals or adjacent minerals—the right to work them. Now that power applied to all minerals, not merely coal. When we come to the 1926 Act, it was plainly desired to enlarge the working facilities with reference to coal, but to leave the power of the Court unenlarged with reference to other minerals.

The procedure with regard to applications is contained in section 5 of the 1923 Act. This is the corollary to section 1, and it might be said that it would have been better to begin with the application and proceed with the grant by the Court; but section 5, having stated the power of the Court to grant a right to work, proceeds to say who are the persons who may apply for a grant of this right. Section 5 says that any person, who has an interest in minerals and is desirous of working and considers that the circumstances are such that a right to work the minerals can be granted, may send in an application for the grant of such a right. Section 13 is clearly intended, beyond any doubt whatever, to enlarge the existing rights with regard to coal. It is no good saying that the only effect of sub-section 1 of section 13 is to enlarge the rights of certain persons to make application, because that would be perfectly useless, unless the powers of the Court to grant the applications are also enlarged. The objectors' submission is that effect can be given to section 13, sub-section 1, by understanding the words " any person who is desirous of searching for or working " as a mere enlargement of section 5 of the old Act, which restricts the persons who may apply to persons who have an interest. The objectors said that the words "any person's " are used because it is intended no longer to restrict the persons who may apply by reference to the interest that they have in the minerals. The answer to that is this, that it is not sufficient to give effect to the plain intention of section 1, which is not merely to enlarge the classes of persons who may apply, but the object of sub-section 1 of section 13 is to enlarge the powers of the Court to grant an application. If the objectors' submission were right, all that he says is done could have been done, and would have been done by sub-section 4 of section 13, which is the sub-section which enlarges section 5 of the old Act. Sub-section 4 is the sub-section which says that section 5 is in future to be read not merely as limited to people who have an interest in minerals, but is to be read as if those words were not in; in other words, any person who is desirous of working minerals. That is done by sub-section 4, but it is submitted that is not what Parliament intended. Parliament intended not merely to enlarge the class of persons who might make application for an order to work, but intended to enlarge the powers of the Court in respect of the grants of the right to work which the Court might make. Therefore it is necessary to read the last part of sub-section 1 of section 13 as corresponding to the first half of sub-section 1. Sub-section 1 reads as follows: " Any person who is desirous of searching for or working, either by himself or through a lessee, any coal, may, under and in accordance with Part I of the Mines (Working Facilities and Support) Act, 1923 (in this Part of this Act referred to as the principal Act) make an application to search for or work the coal." That is all application. The objectors say " any person " means now, in view of sub-section 4, any person, whether he has an interest in the coal, or the adjacent coal, or not. Then it goes on, " and on such application being referred to the Railway and Canal Commission under the principal Act, the Commission may, subject to the provisions of the principal Act, grant the right if they consider that it is expedient in the national interest." The objectors say that that part of the sub-section leaves the Commission with no greater powers than they had under section 1 of the 1923 Act. It would seem to have been singularly useless for Parliament, if it was not intending to enlarge the powers of the Commission, to enlarge the class of persons who might make application for an exercise by the Commission of their powers.

The result is according to the objectors, so far as sub-section 1 of section 13 is concerned, that it does absolutely nothing; it is absolutely useless and otiose, because all that they say it does could be done by the enactment in sub-section 4, omitting those words about having an interest in the coal.

The 1923 Act provides for the circumstances in which the Commission may make the order. Section 6 says that if the Commission is "satisfied that the requirements of this Act are complied with in the case of the applicant" (that is a person who has the interest in the minerals, probably also in the adjacent minerals), and if he can satisfy the Court that he is a person who cannot get what he wants by bargaining under section 4, "if the Commission is satisfied that the requirements of this Part of this Act are complied with in the case of the applicant, and that it is expedient in the national interest." That which governs the power of the Court, and which guides the Court in the granting of the right, in respect of the 1923 Act is the national interest.

Supposing the objectors were right that sub-section 1 of section 13 is merely an enlargement of the classes of persons who may apply, and is a reference to the powers of the Court under the 1923 Act, it would be merely sufficient for Parliament to have said that the Court shall have the same powers under the same conditions as they have under the 1923 Act. It does not say that at all. Parliament says in the latter half of sub-section 1 that the Railway and Canal Commission may, subject to the provisions of the principal Act, grant the right. It does not stop there, but it says "if they consider that it is expedient in the national interest." What is the point of stating one condition on which the Railway and Canal Commission may grant an order, if it has already been stated in conjunction with other conditions? The objectors have overlooked that the reason for this condition, if they consider that it is expedient in the national interest, is contained in section 13. The explanation of the presence of that part of the sub-section is this, that inasmuch as Parliament was granting a new right in the Commission to make an order, it was necessary for Parliament to state any conditions which applied to the new right and to state them explicitly. So it was necessary to lay down this condition, which, if the objectors were right, has already been implied in the words "subject to the provisions of the principal Act." The objectors say that these words, "subject to the provisions of the principal Act," are really the controlling and dominating words, and they prove too much when they say that, because if that is so, "subject to the provisions of the principal Act" imports all the conditions of the right of the Court to make an order which are contained in the 1923 Act; it was, again, perfectly useless and unnecessary for Parliament to add to it by saying, "If they consider that it is expedient in the national interest," because that is already contained in the provisions of the principal Act, reading those words as the objectors read them. The reading of those words, "subject to the provisions of the principal Act," is this [and it is a perfectly reasonable one, and is a necessary one], it means subject to the machinery provisions contained in the principal Act, and without re-enacting clauses 4, 5, 6, 7 and 9, which all refer to the machinery for granting the right. The 1926 Act simply says "subject to the provisions of the principal Act." Those sections are the sections which provide for such matters as compensation, for instance, in clause 9, and clause 6 deals with the period for which the Commission may make the order, and so on.

There is one other piece of drafting which helps to drive home the submission that section 13 is dealing with an entirely new right. Sub-section 3 says: "An ancillary right may be granted to a person to whom a right of working coal is granted in pursuance of this Part of this Act at the time when such last mentioned right is granted or at any subsequent time." Section 3 of the 1923 Act is an absolutely identical sub-section: "an ancillary right may be granted to a person to whom a right of working coal is granted, in pursuance of this Part of this Act at the time when such last mentioned right is granted or at any subsequent time." If section 13 is merely to be restricted

as enlarging Part I by reference to the class of persons who may make an application, what was the sense of using the same words for a different purpose by putting in sub-section 3 of section 13? It shows that there is an entirely new power of the Court, and the appropriate provision, which is contained in sub-section 3 of section 3 of the old Act with reference to the limited powers of the Court therein contained, is inserted in the new Act so as to govern or amplify the new powers of the Court which are intended to be given by section 13.

The other argument, showing all these powers to be absolutely conclusive, is the reference to search for the minerals. The objectors have not denied that that is very important, and it is very difficult for them to get over, and they did not suggest any reason for thinking that the qualification as to the danger of the minerals being permanently unworked could conceivably be applied to the case of a person who wanted to search for minerals. The Commission asked a question as to how you could search for minerals by yourself or through a lessee. What is intended is the case of an existing shaft which is owned by a lessor of the owner of the minerals, and it may be that the lessor of the company that owns the shaft desires through his lessee the right to drive through a fault to discover whether there is a seam at a particular place. You might search for minerals in that way, and that is the sort of case that was in contemplation, which is covered by these words.

A question was asked as to what is the meaning of sub-section 6 of section 13: "This Part of this Act shall be construed as one with Part I of the principal Act, and references in that Part of that Act to a right to work minerals shall include references to any right granted under this Part of this Act." It will be found that a right to work minerals is mentioned in section 9 of the old Act, and it is necessary to good drafting to make it quite plain that the provisions of section 9 are to be, with regard to a right to work minerals, read as referring to a right to work minerals granted under the 1926 Act. That is why it says "and references in that Part of that Act"; for instance, in section 9, a right to work minerals shall include references to any right granted under any Part of this Act. A question was naturally raised when new powers were given in the 1926 Act: which is the right to compensation? It was inevitably raised, and the answer was that the rights to compensation are intended to be the same as under the 1923 Act. Parliament says, "How shall we do this?; we do not want a new code altogether; we can do it by the simple expedient of the draftsman," which is intelligible, "we will use the references to a right to work minerals in the 1923 Act and say that they are to be read as including a right to work minerals under the 1926 Act."

2 The working of coal includes the "working, carrying away, treating and converting minerals" (sub-section 2 of section 1 of the principal Act). The powers given by this section are very wide, when it is read in conjunction with the principal Act. The object of this section is to make the working of the coal more efficient and/or more economical, and in any application under this sub-section these two conditions precedent must be proved.

There are many possible applications which could be brought within the provisions of this section. The words "any person who is desirous of searching for or working . . . coal" contained in sub-section 1 of section 13, read in conjunction with sub-section 2 thereof, enables one colliery company which had entered into boundary or other agreements with two or more collieries with reference to the mutual working of their coal, or the maintenance of joint areas of control, to apply to the Court for the termination of the agreement as an ancillary right based on the more efficient or economical working of the coal. This overcomes the difficulty which had arisen over section 2 of the principal Act, which applied only to lessors of mines, owners of the surface and lords of the manor of manorial minerals, and other persons whose surface rights would be affected by the amendment of existing agreements regarding boundary rights.

The words " any restrictions terms or conditions contained in a mining lease, or otherwise binding on the person entitled to work the coal," are wide enough to include any agreement with a colliery company and third parties. It is submitted that these words are not confined to mining leases or similar documents alone, but the words " or otherwise binding " are so wide as to extend the powers exercisable by the Court under this section in favour of an applicant in connection with any agreement entered into with a colliery undertaking. So long as the applicants prove that they are the persons entitled to work the coal, and that the application, if granted, will result in greater efficiency and economy in working, then, subject to these provisos, the variation of wayleave agreements, haulage agreements (including agreements entered into between collieries and railway or canal companies), reduction of minimum rents in leases or rent for surface facilities and many similar contracts, can be varied under this section. The Commission have to exercise their powers in the national interest, and they can grant the right to work the coal on such terms as they may deem fit. As working includes carrying away (section 1, sub-section 2 of the principal Act), it is obvious that any agreement dealing with the question of carrying the coal away is included in the powers exercisable by the Court in pursuance of the provision contained in this section. Applications have been made (*inter alia*) for the reduction of royalty payments, reduction or cancellation of dead rent, wayleaves and shaft rent (*c*).

3 Under this section an ancillary right can be granted to a person to whom a right of working coal under this part of this Act is granted, and it is necessary to consider the effect of section 3 of the principal Act in connection with this sub-section. Section 3 refers to a person who is entitled to work the coal and gives him the right to apply for ancillary rights under that section. Sub-section 3 of section 13 of the new Act affects, in the first instance, the right of a person to whom a right of working coal is granted at the date of the application for the right to work; and secondly, with the right of a person at a subsequent time to apply for these rights. But as soon as the application for the right to work is granted, the person affected by the right to work comes within the provisions of section 3, and he is therefore not concerned with the provisions of section 13, in so far as his application for ancillary rights is made at a date subsequent to his application for the right to work.

4 This amendment is necessary in order to give effect to the altered conditions contained in sub-section 1 regarding the rights of " any person " to apply for a right to work coal. It must again be observed that this amendment only applies to applications regarding coal, not to applications for the right to work other minerals, unless they are to be worked in conjunction with coal (section 13, sub-section 5).

5 This definition takes the place of the definition of " minerals " contained in section 14, sub-section 1 of the principal Act, in so far as coal is concerned, but it extends and does not lessen that definition in the case of coal.

6 Except in so far as the Act is amended by section 13, all the provisions of the principal Act apply to any application. It is a question for argument how far the provisions of section 4 of the principal Act are nullified by section 13, sub-section 1. Does the right thereby conferred on " any person " to apply exclude the necessity of proving that the conditions laid down in section 4 apply? As stated above, it is submitted that if an application is not governed by section 4 many frivolous applications could be brought within the four walls of the principal and amending Acts which would not otherwise be *prima facie* cases within the meaning of section 5, sub-section 4 of the principal Act and that section 4 must therefore still apply.

(*c*) See *Tilmanstone (Kent) Collieries, Ltd.* v. *Rice and others, ante.*

PART III.

WELFARE FUND.

Royalties welfare levy.

14.—(1) Every person liable to pay mineral rights duty on the rental value of rights to work coal and of mineral wayleaves in connection with coal, or who would be so liable but for any exception by common law or statute, shall be liable to pay for the financial year ending the thirty-first day of March, nineteen hundred and twenty-seven, and for every subsequent financial year a levy (hereinafter referred to as " the royalties welfare levy ") at the rate in each case of one shilling for every twenty shillings of that rental value :

Provided that no person shall be liable to pay the royalties welfare levy in respect of any coal worked, or to be worked, by means of any mine of which the principal object is the getting of fire-clay, ganister, ironstone, or other similar minerals.

(2) The provisions of the Finance (1909-10) Act, 1910, relating to the assessment, collection and recovery of mineral rights duty and matters incidental thereto, as set out and adapted in the Schedule to this Act, shall apply to the royalties welfare levy, and in cases where the proprietor of the coal, or the person to whom rent is paid in respect of a right to work coal or a mineral wayleave in connection with coal, is liable to the payment of mineral rights duty, the royalties welfare levy shall be collected at the same time as and together with that duty, and in every other case the royalties welfare levy shall be payable on the first day of January in each year.

(3) For the purposes of this section and the said Schedule—

" Coal " shall not include lignite or brown coal, but save as aforesaid shall include bituminous coal, cannel coal, anthracite, and all other minerals worked therewith other than minerals exempt from mineral rights duty;

Rental value shall be determined in accordance with the provisions of the Finance (1909-10) Act, 1910, relating to mineral rights duty, as amended by any subsequent enactment;

Other expressions shall have the same meaning as in the said provisions as so amended.

(4) This section binds the Crown.

The provisions of the Finance (1909-10) Act, 1910, relating to the assessment, collection and recovery of mineral rights duty are incorporated by reference in this section, and are set out in the schedule to the Act. There are certain exceptions as to mines (sub-section 3) whose principal object is not the working of coal, and the definition in this respect is similar to that contained in section 13, sub-section 5 of this Act.

Increase in number of welfare committee.

15. The number of the committee constituted under section twenty of the Mining Industry Act, 1920, as amended by the Mining Industry (Welfare Fund) Act, 1925 (hereinafter referred to as " the miners' welfare committee "), shall be increased by the addition of two members appointed by the Board of Trade, of whom one shall be appointed after consultation with the Miners' Federation of Great Britain, and one after consultation with such associations or bodies as may appear to the Board to represent persons liable to pay the royalties welfare levy, and the said section twenty shall have effect accordingly.

This section deals with the increase in the number of the welfare committee. The committee originally provided for by section 20, sub-section 3 of the Mining Industry Act, 1920, consisted of five members; this was increased to seven members by the Mining Industry (Welfare Fund) Act, 1925, s. 1, and now the number is increased to nine, one additional member representing the Miners' Federation of Great Britain and the other representing the mineral owners.

Application of royalties. welfare levy.

16.—(1) The Commissioners of Inland Revenue shall, in accordance with arrangements made with the Board of Trade, from time to time pay over to the fund established under section twenty of the Mining Industry Act, 1920 (hereinafter referred to as the welfare fund), the sums collected by them in respect of the royalties welfare levy.

(2) The Board of Trade shall keep a separate account of the proceeds of the royalties welfare levy paid into the welfare fund.

(3) The miners' welfare committee shall, subject as hereinafter mentioned, apply those proceeds for any of the purposes for which the welfare fund is applicable :

Provided that no part of the proceeds of the royalties welfare levy shall be required to be allocated to any particular district.

The royalties welfare levy is to be paid by the Inland Revenue authorities to the Board of Trade, who are to keep a separate account of these moneys, but the proceeds of the levy are to be applied by the welfare committee for any of the purposes referred to in section 20, sub-section 1 of the Mining Industry Act, 1920, in accordance with principles in which the welfare fund has been applied in the past.

Provision of washing and drying accommodation at coal mines.

17.—(1) It shall be the duty of the miners' welfare committee to secure as far as reasonably practicable the provision at all coal mines, to the satisfaction of the committee, of accommodation and facilities for workmen taking baths and drying clothes.

(2) The committee shall in each year appropriate out of the welfare fund for the purposes aforesaid until the Board of Trade otherwise direct, the whole of the proceeds of the royalties welfare levy paid into the welfare fund in each financial year.

(3) Subsection (5) of section twenty of the Mining Industry Act, 1920, is hereby repealed.

PART IV.

RECRUITMENT.

Recruitment for employment in coal mining industry.

18.—(1) The Minister of Labour may, after consultation with associations representing respectively employers and persons employed in the coal mining industry, make regulations for the purpose of securing that in the recruitment of persons over the age of eighteen years for employment to which this section applies preference is given, while this section is in force, to persons who were employed in such employment during the period of seven days ending on the thirtieth day of April, nineteen hundred and twenty-six, or when last before that date in regular employment, and in particular such regulations may impose such restrictions as may be necessary for that purpose on the engagement of persons for employment to which this section applies, and on the employment of persons engaged in contravention of the regulations, and may provide for requiring the owners, agents and managers of coal mines and persons employed in or seeking such employment to furnish the Minister of Labour with such information as he may require for the purpose of securing compliance with the regulations :

Provided that no such regulations shall impose restrictions on the engagement for employment of any person in actual receipt of a pension granted out of moneys provided by Parliament in respect of a disability arising out of his service with His Majesty's forces during the war.

(2) This section applies to any employment in or about a coal mine in the getting, handling, hauling, preparation and despatch of coal, being employment such as to make the person employed an employed person within the meaning of the Unemployment Insurance Acts, 1920 to 1925, except employment of any class which by the regulations may be excluded from the application of this section. Any question as to whether employment is employment to which this section applies shall be determined by the Minister of Labour.

(3) If any person contravenes or fails to comply with any regulation made under this section he shall be guilty of an offence and shall, in respect of every such offence, be liable on summary conviction to a fine not exceeding ten pounds, or, in the case of a continuing offence, not exceeding five pounds for each day on which the offence continues.

(4) If for the purpose of obtaining employment either for himself or for any other person in contravention of any regulation made under this section any person knowingly makes any false

statement or false representation, or if any person required under the regulations to furnish information to the Minister of Labour knowingly furnishes any false information, he shall be liable on summary conviction to imprisonment for a term not exceeding three months.

(5) All regulations made under this section shall be laid before each House of Parliament as soon as may be after they are made, and if an Address is presented to His Majesty by either House of Parliament within the next subsequent twenty days on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of any new regulation :

Provided that section one of the Rules Publication Act, 1893, shall not apply to any regulations made under this section.

(6) This section shall continue in force until the thirty-first day of December, nineteen hundred and twenty-nine and no longer unless Parliament otherwise determines.

The Minister of Labour has discretionary powers to make regulations respecting recruiting of persons into the coal industry, section 18, sub-section 1. The persons affected are those who would be employed persons within the meaning of the Unemployment Insurance Acts, 1920 to 1925 (section 18, sub-section 2). The regulations when made would affect the employment of persons over the age of eighteen years, preference being given to those persons who were employed in the coal mining industry in the week immediately preceding the coal strike of 1926, or if not so employed, who were last employed in regular work prior to that date (section 18, sub-section 1). These regulations are not to restrict the employment of an ex-service man in receipt of a pension for a disability.

The section also provides that colliery owners, agents, managers, and persons employed in or seeking employment in a colliery shall furnish the Minister of Labour with such information as he may require for making this section effective.

Penalties are imposed on persons contravening or failing to comply with the regulations when made (section 18, sub-section 3), and this would apply to colliery proprietors, managers and agents, and also to persons making false statements or representations in order to obtain employment (section 18, sub-section 4).

PART V.

COAL MINES EXCESS PAYMENTS AND COAL LEVY.

Limitation of further assessments and claims.

19.—(1) After the thirtieth day of September, nineteen hundred and twenty-six, except in a case which is an undetermined case within the meaning of this section, no assessment or additional assessment of coal mines excess payments under the agreement scheduled to the Coal Mines Control Agreement (Confirmation) Act, 1918, or of coal levy under the Coal Mines (Emergency) Acts, 1920 and 1921, shall be made; and no claim

for relief from or for reduction or repayment of coal mines excess payments or of coal levy, or for a payment set-off or recovery or for amendment of any payment, set-off or recovery under the aforesaid agreement or for coal award or additional coal award under the Coal Mines (Emergency) Acts, 1920 and 1921, shall be entertained or allowed.[1]

(2) At any time not later than the said thirtieth day of September the Board of Trade may in the case of any person who is or has been the owner of an undertaking within the meaning of the Coal Mines Control Agreement (Confirmation) Act, 1918, or the Coal Mines (Emergency) Act, 1920, give notice to him that they consider his liabilities and his rights under either the Coal Mines Control Agreement (Confirmation) Act, 1918, or the Coal Mines (Emergency) Acts, 1920 and 1921, or both, as being undetermined; and any person who has been assessed to coal mines excess payments or coal levy, or is entitled to make any claim under the Coal Mines Control Agreement (Confirmation) Act, 1918, or the Coal Mines (Emergency) Acts, 1920 and 1921, may give a like notice to the Board of Trade, and where such notice is given to or by any person his case shall be deemed to be an undetermined case for the purposes of this section.[2]

(3) The Board of Trade may at any time give notice to any person whose case is an undetermined case to the effect that all questions as to his liabilities and his rights under either the Coal Mines Control Agreement (Confirmation) Act, 1918, or the Coal Mines (Emergency) Acts, 1920 and 1921, or both, have in the opinion of the Board of Trade been finally determined.

Any person aggrieved by any such notice may, at any time within thirty days from the date on which the notice is served on him, appeal against it in accordance with the provisions of subsection (5) of section forty-five of the Finance (No. 2) Act, 1915, and the provisions (other than the provisions prescribing the time within which notice of appeal may be given) of any regulation made under subsection (7) of that section, in the same manner as if he were a person dissatisfied with the amount of an assessment to Excess Profits Duty.

If, where notice has been given to a person under this subsection, that person does not appeal against the notice or the appeal is not allowed, his case shall, as from the expiration of the time within which he was entitled to appeal or as from the date on which the appeal is finally determined, as the case may be, cease to be an undetermined case within the meaning of this section, and subsection (1) of this section shall apply accordingly.[3]

(4) Nothing in this section shall affect any powers vested in the Commissioners of Inland Revenue at the commencement of this Act for the recovery of coal mines excess payments or coal levy; or any powers vested in the Board of Trade at the commencement of this Act for the recovery of any moneys payable by the owner of an undertaking in accordance with the provisions of the aforesaid agreement, or of the Coal Mines (War Wage Payment) Directions and Supplementary Directions, 1918 and 1919, or of the Coal Mines (Emergency) Acts, 1920 and 1921.

(5) Notwithstanding anything in this section, the Commissioners of Inland Revenue may at any time make an assessment in respect of any coal mines excess payments or coal levy which appear to them not to have been assessed by reason of any fraud or wilful default on the part of the person liable to be assessed, and recover the amount chargeable on the assessment; and the Board of Trade may at any time recover any moneys payable by the owner of an undertaking under the provisions of the Acts and Directions aforesaid which appear to them not to have been recovered for a like reason; and any person aggrieved by any such assessment or recovery shall have the same right of appealing against it as he would have had if this Act had not passed.

[1] After September 30, 1926, no assessment or additional assessment of coal shall be made under the agreement scheduled to the Coal Mines Control Agreement (Confirmation) Act, 1918, or any coal levy under the Coal Mines (Emergency) Acts, 1920 and 1921, unless a case is an "undetermined case" as defined by section 19, sub-section 2. No claim for relief from, reduction or repayment of excess payments or coal levy under these Acts are to be entertained or allowed after that date.

[2] Before September 30, 1926, the Board of Trade and any person assessed had mutual rights of giving notice that the rights and liabilities of the owner of the undertaking were undetermined, and on such notice being given the case became an "undetermined case" (section 18, sub-section 2).

[3] The Board of Trade may at any time in an "undetermined case" give notice to the person affected that in the opinion of the Board of Trade his rights have finally determined.

A person so affected has within thirty days of the receipt of the notice a right of appeal in accordance with the provisions of the Finance (No. 2) Act, 1915, s. 45, sub-ss. 5 and 7, as if he were a person dissatisfied with the amount of assessment to excess profits duty. This is a right of appeal to the general commissioners of the district in which the appellant is situated or to the Special Commissioners.

PART VI.

MISCELLANEOUS AND GENERAL.

Power of coal-mining companies to establish profit sharing schemes.

20. It shall be lawful for any company, being the owner of an undertaking consisting of or comprising coal mines, notwithstanding anything in the memorandum or articles of association of the company, to establish and carry out a scheme for securing

to persons employed by the company a share in the profits of the company.

Establishment of joint committees for coal mines.

21.—(1) If at any time after the expiration of two years from the commencement of this Act the Board of Trade are satisfied upon representation made to them as respects any coal mine (not being a small mine within the meaning of the Coal Mines Act, 1911) that no adequate opportunity has been afforded by the owner, agent and manager of the mine for the establishment of machinery for mutual discussion between representatives of the management of the mine and representatives of workers employed in or about the mine, of matters of common interest in regard to the working of the mine, the Board may by order direct that regulations made under this section shall apply to that mine.

(2) The Board of Trade may make regulations providing for the constitution of a joint committee for any mine to which the regulations apply, consisting of representatives of the owners and management of the mine and of the workers employed in or about the mine, and having such functions as may be prescribed by the regulations :

Provided that—

(a) such regulations shall not apply to any mine unless and until they have been applied thereto by an order made under the foregoing provisions of this section;

(b) no powers in relation to the control or management of a mine shall be included among the functions of any such joint committee; and

(c) the regulations shall provide for the selection of the representatives of workers employed in or about a mine by ballot of those workers from amongst their own number.

(3) Regulations made under this section shall provide for the procedure and meetings of joint committees and for enabling joint committees to obtain such information and to cause such inspections to be made as may be necessary for the purpose of enabling them to exercise any of their functions under the regulations; and any persons appointed in accordance with the regulations to make such inspections shall have all such facilities for the purpose of making the inspections as persons appointed to make inspections under section sixteen of the Coal Mines Act, 1911, and that section shall apply accordingly.

(4) Subsections (2), (3), (4) and (5) of section eighty-six, and section one hundred and seventeen of the Coal Mines Act,

1911, and Part I. of the Second Schedule to that Act (which relate to orders making general regulations under that Act), shall apply with the necessary modifications to regulations under this section, and for the purposes of the said Part I. of the Second Schedule to that Act as so applied, the expression a " general objection " [1] means an objection made by or on behalf of any association or body which satisfies the Board of Trade that it represents a substantial proportion of owners of mines or of persons employed in or about mines in Great Britain.

(5) An order under this section may be made so as to be in force either permanently or for a limited period, and may be amended or revoked by any subsequent order.

(6) In this section, except where the context otherwise requires, the expression " management " has the same meaning as in the Mining Industry Act, 1920.

[1] A " general objection " is defined in clause 8 of the Second Schedule to the Coal Mines Act, 1911, and the definition in the present sub-section is a variation of that definition. In any case it would have to be referred to a reference committee as defined by sub-section 3 of section 117 of the Coal Mines Act, 1911.

Power to vary 1 & 2 Geo. 5, c. 50, ss. 9 and 10.

22.—(1) The Board of Trade may, after consultation with the Board for Mining Examinations, by order vary the provisions of sections nine and ten of the Coal Mines Act, 1911, relating to the examinations and qualifications of applicants for certificates of competency under that Act, and the grant of such certificates, in such manner as may appear to the Board of Trade to be expedient for the purpose of adapting them to the needs of the industry and the progress of education.

(2) The provisions of subsections (3) to (5) of section eighty-six, and section one hundred and seventeen of the Coal Mines Act, 1911, and of Part I. of the Second Schedule to that Act, shall apply, with the necessary modifications with respect to orders made under this section, in like manner as those provisions apply to orders made under the said section eighty-six.

Facilities to be given to Department of Scientific and Industrial Research.

23.—(1) Before any person sinks, for the purpose of searching for or getting any minerals, a shaft or borehole intended to reach a depth of more than one hundred feet below the surface, he shall give to the Committee of the Privy Council for Scientific and Industrial Research (hereinafter referred to as " the Committee ") notice in writing of his intention to do so, and any person who for such a purpose sinks any such shaft or borehole shall keep a journal thereof, and shall retain for a period of not less than six months such specimens of the strata passed through

as may have been obtained in the course of the sinking thereof, either as cores or fragments, and shall allow the Committee, or any officer appointed by them, to have free access at all reasonable times to any such shaft, borehole or core, to inspect and take copies of the journals of such shafts or boreholes, to inspect all specimens so obtained and kept, and to take representative specimens of any such cores.

(2) If the person sinking any such shaft or borehole as aforesaid gives notice in writing to the Committee requiring them to treat as confidential any copies of journals or specimens so taken by the Committee or by any officer appointed by them, the Committee shall not allow those copies or specimens to be published or shown to any person not being an officer of the Department of Scientific and Industrial Research, except with the consent of the person sinking such shaft or borehole :

Provided that, if at any time the Committee give notice to any person from whom such consent is required that, in their opinion, his consent is unreasonably withheld, then that person may, within three months after such notice is given, appeal to the Railway and Canal Commission, but if at the expiration of that period no such appeal has been made, or if after hearing the appeal the Commission do not make an order restraining them from doing so, the Committee may proceed as if such consent had been given.

(3) The owner, agent, or manager of every mine shall allow the Committee or any officer appointed by them to have free access at all reasonable times to all underground workings, and shall supply to the Committee or to any such officer as aforesaid such information and such specimens of seams or strata sunk through or opened out at the mine as may be reasonably required by the Committee.

(4) If any person sinking any shaft or borehole, or the owner, agent or manager of any mine fails to comply with any obligation imposed on him by the foregoing provisions of this section, he shall, in respect of each offence, be liable on summary conviction to a fine not exceeding fifty pounds.

(5) Any officer appointed by the Committee shall have the same rights as to the production and examination of plans and sections kept in pursuance of sections twenty or twenty-one of the Coal Mines Act, 1911, or sections fourteen or nineteen of the Metalliferous Mines Regulation Act, 1872, as are by those Acts conferred on inspectors, and those Acts shall apply accordingly.

Provisions as to Railway and Canal

24.—(1) The jurisdiction of the Railway and Canal Commission under this Act shall be deemed to be part of their jurisdiction

under and for the purposes of the Railway and Canal Traffic Act, 1888, and section ten of the Mines (Working Facilities and Support) Act, 1923, as amended by any subsequent enactment, shall apply in respect of proceedings under this Act in like manner as it applies to the determination of questions relating to applications under that Act : Commission and as to security for costs.

Provided that—

(a) the power of holding inquiries under the said section ten shall extend to the holding of inquiries other than local inquiries; and

(b) the Commission may refuse to allow the public to be present at any proceedings of the Commission or inquiry under this Act while matters are being dealt with which, in the opinion of the Commission, are of a confidential character.

(2) The Lord Chancellor, or in Scotland the Lord President of the Court of Session, may attach to the Commission for the purposes of Part I. of this Act, any officers of the Supreme Court or the Court of Session, and such officers shall perform such duties as may be assigned to them by the Commission with the consent of the Lord Chancellor or the Lord President of the Court of Session.

(3) If it is proved to the satisfaction of the Railway and Canal Commission that there is good cause for requiring any person who has submitted a scheme under Part I. of this Act, or who has made an application for the grant of a right under Part II. of this Act, to give security for any costs which may be ordered to be paid by him to any person affected by the scheme or application, the Commission shall have power to make an order that all proceedings upon the scheme or application, as the case may be, shall be stayed until such security for the costs of that person as may be required by the order has been given to the satisfaction of the Commission, and may order the payment into court of the whole or any part of any sum so required to be paid by way of such security. The provisions of subsections (2) and (3) of section one of the Mines (Working Facilities and Support) Act, 1925, shall apply to any money required to be paid into court under this subsection but, subject to those provisions, the rules regulating the procedure of the Commission may provide as to the manner in which any such security is to be given and as to the return of any such security.[1]

[1] This incorporates the provisions of section 10 of the Mines (Working Facilities and Support) Act, 1923, which itself incorporates the provisions of the Railway and Canal Traffic Act, 1888.

The reference in sub-section 1 (a) of this section relates to section 10,

sub-section 1 (b) of the Mines (Working Facilities and Support) Act, 1923. Clause (b) of this sub-section empowers the Court to hold inquiries in private.

[1] This empowers the Court to order security for costs to be made by an applicant under Part I or for the grant of a right under Part II to any person affected by any scheme, and that all proceedings upon any such application shall be stayed until such security is given.

Definition of securities.

25. For the purposes of Part I. of this Act the expression "securities" includes stocks and shares, and the expression "debentures" includes debenture stock.

Short title and extent.

26.—(1) This Act may be cited as the Mining Industry Act, 1926.

(2) This Act shall not extend to Northern Ireland.

SCHEDULE.[1]

PROVISIONS OF THE FINANCE (1909-10) ACT, 1910 APPLIED.

20.—(3) Every proprietor of any coal and every person to whom any rent is paid in respect of any right to work coal or of any mineral wayleave in connection with coal shall, upon notice being given to him by the Commissioners of Inland Revenue requiring him to give particulars as to the amount received by him in respect of the right or wayleave, as the case may be, and where the proprietor is working the coal, particulars as to the coal worked, make a return in the form required by the notice, and within the time, not being less than thirty days, specified in the notice, and in default shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court.

(4) Royalties welfare levy shall be assessed by the Commissioners of Inland Revenue and shall be payable at any time after the first day of January in the year for which the levy is charged, and any such levy for the time being unpaid shall be recoverable as a debt due to His Majesty from the proprietor of the coal where the proprietor is working the coal, and in any other case from the immediate lessor of the working lessee. As between the immediate lessor and the working lessee, the levy shall be borne by the immediate lessor, notwithstanding any contract to the contrary, whether made before or after the passing of this Act.

21.—(1) Any immediate lessor who under this Act pays any royalties welfare levy, and is himself a lessee of the right to work the coal or of the wayleave in respect of which the levy is paid, shall be entitled to deduct from the rent paid by him in respect of the right to work the coal or the wayleave, as the case may be, to his lessor a sum equal to the royalties welfare levy on a rental value of the same amount as the rent payable; and any person from whose rent any such deduction is made may make a similar deduction from any rent paid by him in respect of the right to work the coal or in respect of the wayleave, as the case may be.

(2) Any person in receipt of rent from which a deduction may be made under this paragraph shall allow the deduction, and the person

making the deduction shall be discharged from the payment of an amount of rent equal to the amount deducted, and any contract for the payment of rent without allowing such a deduction shall be void.

(3) If any person refuses to allow a deduction which he is required to allow under this section, he shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court.

(4) Where in any special case royalties welfare levy has been charged on a rental value based on a rent which has been substituted under the provisions for determining rental value applied by this Act for the rent actually payable by the working lessee, the Commissioners of Inland Revenue shall, on the application of any lessor from whose rent a deduction may be made in respect of royalties welfare levy, make a corresponding substitution or reduction as regards that rent, if they consider that the grounds for the substitution or reduction, as the case may be, are applicable in the case of the rent with respect to which the application is made.

[1] See section 14, p. 94, *supra*.

COAL MINES ACT, 1930.

[20 & 21 GEO. 5. c. 34.]

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An Act to provide for regulating and facilitating the production, supply and sale of coal by owners of coal mines; for the temporary amendment of section three of the Coal Mines Regulation Act, 1908; for the constitution and functions of a Coal Mines National Industrial Board; and for purposes connected with the matters aforesaid.[1] [1st August 1930.]

PART. I.

PRODUCTION, SUPPLY AND SALE OF COAL.

Schemes regulating production, supply and sale of coal.

1.—(1) There shall be a scheme (hereafter in this Act referred to as " the central scheme ") regulating the production, supply and sale of coal by owners of coal mines situated in Great Britain, which shall, subject to the provisions of the scheme, be administered by a body referred to in this Act as the " central council " [2]; and, subject to the provisions of this Act, there shall be for every district a scheme (hereafter in this Act referred to as a " district scheme ") regulating the production, supply and sale of coal by owners of coal mines situated in the district, which shall, subject to the provisions of the scheme, be administered by a body referred to in this Act as an " executive board." [3]

(2) No scheme shall have effect under this Act unless it has been approved or made by the Board of Trade.[4]

(3) If before the expiration of the period of six weeks from the passing of this Act, or such further period as the Board of Trade may in any case allow, the central scheme or a district scheme for any district is submitted to the Board by any voluntary association or other persons appearing to the Board to be representative of a majority of the owners of coal mines situated in Great Britain or in the district, as the case may be, the Board may, if they are satisfied that the scheme complies with the requirements of this Act,[5] approve the scheme with or without modifications, and in default of such a central or district scheme being so submitted and approved as aforesaid, the Board shall themselves make the scheme.[5]

(4) For the purposes of the last foregoing subsection, the owners of coal mines which, during the period of six months ending on the thirty-first day of December, nineteen hundred and twenty-nine, produced more than half the output of Great Britain or of any district, shall, respectively, be deemed to be a majority of the owners of coal mines situated in Great Britain or in the district [6]:

Provided that, if it appears to the Board of Trade that during the said period of six months the output of a substantial number of coal mines in any district was subject to regulation under any arrangements made by a voluntary association or otherwise, the Board may treat any scheme submitted to them for that district as if the latest period of six months during which the output of those coal mines was not so regulated had been the period mentioned in the foregoing provisions of this subsection.

(5) Any scheme may be amended with the approval of the

Board of Trade in manner provided by the scheme, and a new scheme to have effect in substitution for any scheme theretofore in force may at any time be submitted to the Board of Trade by the central council, or, in the case of a new scheme for any district, by the executive board for any district affected thereby, and any scheme so submitted shall, if approved by the Board, have effect accordingly.[7]

(6) Every scheme shall come into force on such date as the Board of Trade may appoint, being (except where a scheme is made by the Board themselves or is to take effect in substitution for a previous scheme) a date not less than one month nor more than three months after the passing of this Act, and the Board may appoint different dates for different schemes, and any scheme for the time being in force shall have effect as if it were enacted in this Act.[8]

(7) The Board of Trade shall, immediately after making or approving any scheme or any amendment thereof, publish the scheme or amendment, as the case may be, in the London Gazette and for the purpose of the Documentary Evidence Acts, 1868 to 1895, any such scheme or amendment shall be deemed to be an order of the Board.

[1] The Act is divided into five parts :—

Part I deals with the regulation of the production, supply and sale of coal.

Part II deals with the amalgamation of colliery undertakings by means of amalgamation or absorption schemes.

Part III deals with the regulation of hours of work.

Part IV deals with the question of arbitration arising out of the terms of proposed agreements regulating wages and conditions of labour.

Part V is general.

The Act sets up six new administrative bodies as follows :—

Under Part I.

The Central Council.
The Executive Board.
The National Committee of Investigation.
The District Committee of Investigation.

Under Part II.

The Coal Mines Reorganisation Commission.

Under Part IV.

The Coal Mines National Industrial Board.

The administration of the Act is subject to the supervision of the Board of Trade, with a submission to the Railway and Canal Commission for their confirmation of certain schemes under Part II of the Act.

[2] For *central scheme* and *central council* see section 2, *infra*. Section 2, sub-section 1 deals with the constitution of the central council which so far as representation on that body is concerned is representative of the owners of coal mines in Great Britain through the district representations. Section 2, sub-section 2 deals with the executive and administrative powers of the council, in other words the scheme itself. This scheme is entirely distinct from any of the district schemes.

[3] For *district scheme* and *executive board* see section 3, p. 113. Section 3,

sub-section 1 deals with the constitution of the executive board. Section 3, sub-section 2 deals with the executive and administrative powers of the board, *e.g.*, the scheme itself.

Owners of Coal Mines.

"Owner" has the same meaning as in the Coal Mines Act, 1911. See definitions under section 18 of the present Act. The definition of owner in section 122 of the Coal Mines Act, 1911, is as follows :—

"'*Owner,*' *when used in relation to any mine, means any person or body corporate who is the immediate proprietor or lessee, or occupier of any mine, or of any part thereof, and in the case of a mine the business whereof is carried on by a liquidator or receiver includes such liquidator or receiver, but does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or licence for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine; but any contractor for the working of any mine, or any part thereof, shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability.*"

The above definition is wide and clear in its terms. As to co-owners, see *R.* v. *Brown*, 7 E. & B. p. 757; *Baker* v. *Carter*, 3 Ex. D. p. 132; a tenant under agreement is an owner, see *Stott* v. *Dickenson*, 34 L. T. (N.S.) p. 291; but not so if the lease has expired, see *Stott* v. *Dickenson*, *ante*; the words "or is merely the owner of the soil, and not interested in the minerals of the mine" must be read together, as the other classes of persons excluded from the definition of owner are not affected by these words and the interest is a pecuniary interest only, see *Evans* v. *Mostyn*, 2 C. P. D. p. 552. As to an owner being liable for breach of regulations where a certified manager is appointed, who takes all responsibility, see *Wing* v. *Dent Main Colliery Co., Ltd.*, [1924] 2 K. B. 389.

[4] All voluntary schemes cease to be effective but may apparently be continued under the provisions of the Act if the Board of Trade approve.

[5] The words "complies with the requirements of this Act," suggest that a scheme which at the date of the passing of the Act embodied the principles set out in section 3 is a scheme complying with the requirements of the Act, as the central scheme is in reality only a unification of the several district schemes in so far as the council allocate to each district its maximum output and the executive board gives effect to this allocation. If a district scheme, in existence at the passing of the Act, is submitted by the requisite majority of owners, this is apparently a scheme within the meaning of section 3, to which a maximum output can be allocated. The board have a statutory jurisdiction to make a scheme in cases where (a) no scheme is submitted; or (b) a scheme when submitted does not comply with the requirements of the Act. In any event they are the final arbiters in all cases of dispute under Part I, as the Act is so framed that the administrative and executive powers of the board (notwithstanding the powers vested in the national committee of investigation in pursuance of the provisions of section 5) are absolute, so far as the execution of the provisions of Part I is concerned. And see notes to section 5, sub-section 7, *post*, p. 124.

[6] For the purpose of ascertaining the "majority of owners of coal mines" in any district it is clear that the proviso to this sub-section is intended to protect those owners of coal mines for the purpose of representation on the executive board of a district, who had entered into a voluntary arrangement for the limitation of output during any period prior to December 31, 1929, so long as the six months' period when they were not controlled by a voluntary arrangement as to output and on which their returns for the purposes of computation under the Act are based is the last period prior to December 31, 1929, when they were free from control.

[7] It is clear that the central council is a distinct entity from the several district executive boards. The submission of new schemes to the Board of Trade by the central council is limited to new central schemes. The submission to the Board of Trade of new district schemes is made direct by the individual district executive boards requiring the approval of the Board of Trade to such schemes.

Any amended scheme when approved by the Board of Trade is in fact a "new scheme" for the purposes of the Act.

[8] As there is a period of six weeks under the provisions of sub-section 3 in which the central scheme or a district scheme or schemes may be submitted by any voluntary association for the approval of the Board of Trade and this period may be extended by the Board of Trade it is a matter for consideration what effect will be given to the statutory limitation of time contained in sub-section 6, within which a scheme is to come into force, namely, "not more than three months after the passing of the Act," in cases where an extension is given to voluntary associations to submit schemes after the said six weeks limitation, but which cannot thereby come into force within the above-named period.

Provisions of central scheme.

2.—(1) The central scheme shall provide for the constitution of the central council which shall, subject as hereinafter provided, be composed of representatives of all the owners of coal mines in the several districts :

Provided that, if the scheme is made by the Board of Trade, the central council shall be composed of persons nominated by the Board of Trade after consultation with such voluntary associations (if any) as may appear to the Board to be representative of the owners aforesaid.[1]

(2) The central scheme shall further provide for the following matters—

(a) for empowering the central council to appoint officers and do all things necessary for the discharge of their functions under the central scheme [2];

(b) for the allocation to each district by the council, after consultation with the executive board for the district, of a maximum output for the district (in this Act referred to as "the district allocation");

(c) for the district allocation being determined at such times and for such periods as the council think fit, so however that the council shall be required to amend the allocation during any such period if they are satisfied upon the representation of the executive board for the district that it is necessary to do so in order to meet an increased demand for coal or any class of coal;

(d) for the consideration by the council of the operation of the district schemes and for the giving of advice thereon by the council to the executive boards for the several districts, with a view to co-ordinating the operation of the district schemes [3];

(e) for the collection by the council from the executive boards for the several districts of levies, imposed upon them in proportion to the output or disposal of their respective districts, for the purpose of defraying the expenses of the council [4];

(f) for the establishment of a central fund, for the administration and control of the fund (subject to the provisions of the central scheme) by the council, for the payment into the fund of any money received by the council under the provisions of that scheme, and for the payment out of the fund of the expenses of the council and any money payable by the council under the provisions of that scheme [5];

(g) for the appointment of trustees for the council, for the vesting in the trustees of the central fund and of all other property of the council, and for enabling the trustees to sue and be sued for and on behalf of the council;

(h) for requiring the executive boards for the several districts to furnish to the council, or any person authorised by the council, such returns, accounts and other information as the council may consider necessary for the operation of the central scheme [6];

(i) for securing that any executive board, which is aggrieved by any act or omission of the council or of any other executive board or of any other persons in respect of their functions under a scheme in force under this Act, may refer the matter to one or more independent arbitrators, appointed in such manner as may be provided by the scheme; and for the manner in which any such reference is to be heard and determined [7];

(j) for the imposition on and recovery from an executive board for a district of such monetary penalties as may be specified by the central scheme in the event of that board, or of any other person having functions under the scheme for that district, contravening or failing to comply with the central scheme [8];

(k) for the manner in which the assets and liabilities of the council are to be dealt with on the expiration of this Part of this Act.[9]

(3) The central scheme may provide for such matters as appear to the Board of Trade to be incidental to, or consequential on, the foregoing provisions of this section or to be necessary for giving effect to those provisions.

(4) If the central council make to the Board of Trade repre-

sentations that for the purpose of regulating or facilitating the production, supply, or sale of coal, or any class of coal, by owners of coal mines situated in Great Britain it is necessary or expedient that the central scheme should make provision for any matters in addition to or in substitution for the matters mentioned in subsections (2) and (3) of this section, the Board may lay before each House of Parliament the draft of an order providing that the scheme may be amended so as to provide for the matters with respect to which the representations were made and those matters shall be specified in the draft order, and, if each House resolves that the order shall be made, the Board shall make an order in the terms of the draft to take effect on such date as may be specified in the order, and the scheme may be amended accordingly in manner provided by the scheme.[10]

[1] There is nothing in the Act limiting the number of representatives from each district who may be appointed to the committee.

If the scheme is made by the Board of Trade there is no condition in the Act that persons outside the voluntary associations shall be appointed to the council, if sufficient members can be obtained through the voluntary associations in each district.

[2] The executive board may be represented on the council, and they are duly protected under the Act and can appeal to the district committee of investigation and the national committee of investigation, see section 5, *post*, p. 120.

[3] Any co-ordination of district schemes would be presumably with the object of lowering the cost of production, and facilitating the economic use of coal.

[4] The district levy is imposed directly on the owners of coal mines in each district in proportion to their output or disposal and through each district to the central council; see section 3, sub-section 2 (g), *post*, p. 114.

[5] The central fund presumably would include all payments received from every district.

[6] The wording of clause (h) is very wide and it is submitted that taken in conjunction with section 3, sub-section 2 (j) mine owners are bound to disclose any matter affecting their output or disposal to the executive board or council.

[7] The appointment of an arbitrator is also provided in certain cases under section 5, sub-sections 8 and 9 after investigation by a national committee of investigation. Clause (i) of section 2, sub-section 2 is a separate provision enabling reference by executive boards when they are "aggrieved by any act or omission"—"in respect of their functions under a scheme in force under the Act." In accordance with the proviso to section 5, sub-section 1 no reference can be made to the committee in cases where an arbitrator can be appointed under a scheme, namely, under sub-clause (i). Also see notes to section 5, *post*, p. 123.

[8] The words "or any other person having functions under the scheme for that district" would include any coal owner.

[9] Namely, on December 31, 1932, see section 10, *post*, p. 126.

[10] It would appear that sub-section 3 is wide enough to give the central council all additional powers necessary "for giving effect" to the provisions of section 2. It is quite clear that the provisions of sub-section 4 would not permit the Board of Trade to legislate by Order in Council for matters which, although they might be "in addition to or in substitution for" the matters set out in sub-sections 2 or 3 of section 2, are actually outside the fundamental provisions of Part I of the Act.

Provisions of district scheme.

3.—(1) Every district scheme shall provide for the election of the executive board by all the owners of coal mines in the district in such manner as will ensure that any owners, who were not represented by the voluntary association or other persons who submitted the scheme, shall be fairly represented on the board as first elected :

Provided that, if the scheme is made by the Board of Trade, the executive board shall be composed of persons nominated by the Board of Trade after consultation with such voluntary association (if any) as may appear to the Board of Trade to be representative of the owners aforesaid, or, where there is no such association, with the central council.[1]

(2) Every district scheme shall further provide for the following matters—

(a) for empowering the executive board to appoint officers and do all things necessary for the discharge of their functions under the scheme;

(b) for the determination of the class to which any coal produced in the district belongs for any purpose;

(c) for the determination, at such times and for such periods as may be decided in accordance with the provisions of the scheme, of the standard tonnage of every coal mine in the district in respect of coal and, if it is so decided in accordance with the provisions of the scheme, in respect of any class of coal, so, however, that the method of determination shall be specified in the scheme, and shall be such a method as will ensure that, for the purpose of the determination, regard shall be had to the special circumstances of every coal mine (including the efficiency and economy of the working of the coal mine, the extent to which it has been developed or is being developed for economic working, the extent to which its output has been increasing or decreasing, and, in the case of the first determination, the proportion which the output of the coal mine bore to the output of the district during some recent period during which no arrangements made by a voluntary association or otherwise were in force regulating the output of any substantial number of coal mines in the district) [2];

(d) for the determination, at such times and for such periods as may be decided in accordance with the provisions of the scheme, of the proportion (in this Act referred to as the "quota") of the standard tonnage which each of the coal mines in the district is to be allowed to produce, so, however, that the scheme shall provide—

(i) that in any district in which a standard tonnage has been determined for any class of coal, a separate quota may be fixed as respects that class; and

(ii) that the quota fixed as respects coal or any class of coal shall be the same proportion of the standard tonnage of coal, or of the class of coal, as the case may be, for all coal mines in the district; and

(iii) that all quotas shall be so calculated that, during any period for which the district allocation has been fixed by the central council, that allocation shall not be exceeded [3];

(e) for enabling arrangements to be made by owners of coal mines in the district, whereby the output of coal or any class of coal from any such mine may exceed the quota fixed for that mine, as respects coal or that class of coal, so long as the output of coal or that class of coal from some other mine in the district is lower than the quota fixed for that other mine, as respects coal or that class of coal, by an amount not less than the excess [4];

(f) for the determination, at such times and for such periods as may be decided in accordance with the provisions of the scheme, of the price below which every class of coal produced in the district may not be sold or supplied by owners of coal mines in the district, and for securing that the actual consideration obtained by the sale or supply of the several classes of coal, exclusive of coal supplied free or at reduced rates for the use of persons who are or have been employed in or about the mine, and the dependants of persons who have been so employed, shall not be less in value than the price so determined [5];

(g) for the collection by the executive board from the owners of coal mines in the district of levies, imposed upon the several owners in proportion to the output or disposal of their respective coal mines in the district, for the purpose of defraying the expenses of the exe-

cutive board and any penalties imposed on, or levies payable by, that board under the provisions of the central scheme [6];

(h) for the establishment of a district fund, for the administration and control of the fund (subject to the provisions of the scheme) by the executive board, for the payment into the fund of any money received under the provisions of the central scheme or of the district scheme by the executive board or by any other persons in respect of their functions under the district scheme, and for the payment out of the fund of the expenses of the executive board and of any moneys payable by that board under either of those schemes;

(i) for the appointment of trustees for the executive board, for the vesting in the trustees of the district fund and of all other property of the executive board, and for enabling the trustees to sue and be sued for and on behalf of the executive board;

(j) for requiring the owners of coal mines in the district to furnish to the executive board or any person authorised by that board such returns, accounts and other information as that board may consider necessary for the operation of the scheme [7];

(k) for the production to and inspection by an accountant authorised by the executive board for this purpose of books and accounts relating to any coal mine in the district and for the submission by him of a report to the executive board [8];

(l) for securing that any owner of a coal mine in the district, who is aggrieved by any act or omission of the executive board or of any other persons in respect of their functions under the scheme, may refer the matter to one or more independent arbitrators, appointed in such manner as may be provided by the scheme; and for the manner in which any such reference is to be heard and determined [9];

(m) for the imposition on and recovery from the owner of any coal mine in the district of such monetary penalties as may be specified by the scheme in the event of his contravention of or failure to comply with the scheme [10];

(n) for the manner in which the assets and liabilities of the executive board are to be dealt with in the event of the scheme ceasing to have effect under this Act or on the expiration of this Part of this Act:

Provided that a district scheme may make provision for the determination of the standard tonnage of, and quota for, any two or more coal mines in the district which are worked by the same colliery undertaking as if they were one coal mine.

(3) A district scheme may further provide—

(a) for the deduction, if it is so decided in accordance with the provisions of the scheme, from the quota of any coal mine for any period of the tonnage by which, in contravention of the provisions of the scheme, the output of the coal mine has during any previous period exceeded the quota of the coal mine for that previous period, but without prejudice to any penalty that may have been incurred by reason of the excess [11];

(b) for such matters as appear to the Board of Trade to be incidental to, or consequential on, the foregoing provisions of this section or to be necessary for giving effect to those provisions.

(4) If the executive board for any district make to the Board of Trade representations that for the purpose of regulating or facilitating the production, supply, or sale of coal, or any class of coal, by owners of coal mines situated in that district it is necessary or expedient that the district scheme should make provision for any matters in addition to or in substitution for the matters mentioned in subsections (2) and (3) of this section, the Board may lay before each House of Parliament the draft of an order providing that the scheme may be amended so as to provide for the matters with respect to which the representations were made, and those matters shall be specified in the draft order, and, unless either House before the expiration of a period of twenty days on which that House has sat next after the draft is laid before it resolves that the order shall not be made, the Board may make an order in the terms of the draft to take effect on such date after the expiration of that period as may be specified in the order, and the scheme may, with the approval of the Board, be amended accordingly in manner provided by the scheme :

Provided that, in the case of any draft order providing that a district scheme may be amended so as to provide for empowering the executive board for the district, subject to the consent of the central council, to collect from the owners of coal mines in the district levies for the purpose of facilitating the sale of any class of coal produced in the district, the foregoing provisions of this section shall have effect as if for

the reference therein to a period of twenty days there were substituted a reference to a period of twenty-five days.[12]

1 The provision in the district scheme for the inclusion on the executive board in each district of all owners of coal mines ensures that owners who remained outside the voluntary schemes or associations in existence prior to the Act, schemes similar to the " five counties scheme " shall be represented on the executive board, with an inferential right to election on the central council in accordance with the provisions of section 2. This will prevent undercutting in price and excessive output as the several district schemes are binding on " all the owners of coal mines," and their representation on the several executive boards will ensure them an adequate opportunity of protecting their interests in conjunction with other owners.

The proviso will be effective only in those cases where a district is unable to submit a scheme. It does not apply to districts where a scheme is submitted. It is obvious that the proviso is particular and not general.

2 It has been suggested that the Act contains no provisions by which a new coal mine can obtain a " quota," with a consequent inability for estimating the standard tonnage of a new coal mine. If, however, the definition of " coal mines " as defined in section 18, sub-section 1 is considered in conjunction with the class for whom the Act legislates, namely, " owners of coal mines," it will be seen that any " owner of a coal mine " comes within the provisions of the Act when the principal object of the mining operations is the getting of coal. Were it otherwise no old pit which had been closed down over a lengthy period, or even a pit closed down temporarily, would get a " quota." Further, the provisions that the executive board shall have regard to the " special circumstances " of every coal mine including " the extent to which it has been developed or is being developed for economic working, the extent to which its output has been increasing or decreasing " clearly indicate that every pit once it becomes productive or has returned to a productive state is entitled to a " quota."

On the " first determination " of the standard tonnage the comparison of output is to be made; thereafter the " determination " will be made " at such times and for such periods " as may be decided by the executive board.

3 The standard tonnage may be either a total district tonnage or separate district tonnages for separate classes of coal. The " quota " of the coal mines in each district will depend upon this original determination by the executive board of each district.

It is clear from sub-clause (ii) that the class " quota " for pits is proportional on the relative district production of each pit, and the same remark applies to coal as distinct from class of coal. It is premised that a colliery in a district where class " quotas " are determined upon will not lose its district " quota " because it does not produce coal of the class to which the " quotas " relate.

It is clear from sub-clause (iii) that the basis of computation from a national point of view is the district allocation.

4 This clause enables the district allocation to be maintained when the " quotas " are varied. As the duties of the executive board are limited (*inter alia*) to making provisions for giving effect to section 3, it would seem that the " coal owners " themselves can mutually arrange for variations of quota within the district maximum without reference to the executive board.

5 The intention of this clause is obvious. How the executive board can secure that the " actual consideration " shall not be less in value than the price determined upon as a minimum for any particular district raises a question of some difficulty. Methods might be devised whereby advantages could be given to consumers which would effectively overcome the effect of this particular provision.

[6] The only point for consideration is the basis of collection in cases where coal owners vary their "quota" under sub-clause (e) without reference to the executive board. It is questionable whether, on a strict interpretation of the Act, the executive board could insert any provisions in the scheme limiting the rights of coal owners under this clause with the object of curtailing any mutual arrangements made between coal owners for varying their individual output, even under the Mandate of the Central Scheme.

[7] This is an extremely wide provision. It is a question of fact in any particular instance what "other information" is necessary for the operation of the scheme. The "operation of the scheme" is the basis of the executive board's power of requiring information from coal owners and this cannot be exceeded.

[8] It is presumed that this power will be used sparingly. The expression "relating to *any coal mine*" supports the view that only in particular instances and for good cause shown will an inspection and audit take place.

[9] The right to refer to an arbitrator is dependent upon an owner of a coal mine being "aggrieved" by any "act or omission" of the executive board or "any other persons" in respect of "their functions under the scheme."

On reference to the proviso to section 5, sub-section 1 it is clear that no reference can be made under that section in cases which could be referred to an arbitrator under the scheme. As a reference under section 5 is based upon any investigation of "a complaint" made in respect of the "operation" of a scheme and the provisions of section 2 (h) and this clause cover a reference on "any act or omission," it will be difficult in some cases to determine under which provision a particular reference should be made.

Presumably in case of dispute the Board of Trade will determine the matter in pursuance of the provisions of section 5, sub-section 6. In any event there is nothing in the Act limiting the right of parties to apply to the Courts in cases of dispute as to the construction of these sections. The Court would be the Supreme Court of Judicature.

[10] Section 9 provides a penalty in the event of no penalty being expressed under the scheme, see note, section 9, p. 126, *post*.

The proviso to sub-section 2 is of assistance in regulating the output of coal from collieries owning and working several pits. It is clear that the "quota" will be a pit and not a colliery "quota."

[11] The words "if it is so decided" suggest that a colliery may exceed its quota under the scheme for a period and not suffer a deduction on its "quota" for a subsequent period. This, however, does not affect the criminal liability of a Coal Owner for excessive output, see section 9, *post*, p. 126.

[12] The Board of Trade have no authority to legislate by order in council on matters which are outside the scope of the Act. Any matters "in addition to or in substitution for" the matters set out in sub-section 2 or 3 must comprise proposals for regulating the "production, supply and sale of coal by owners of coal mines" in accordance with section 1 of the Act and must comprise nothing outside these limitations.

If sub-section 2 (g) is considered, it will be observed that this sub-section provides levies for: (1) defraying expenses; (2) penalties; (3) levies payable under the central scheme. Apparently these three provisions do not include levies for "facilitating the sale of coal," hence the necessity for this proviso empowering a special levy for this purpose by Order in Council.

Effect of schemes on contracts.

4.—(1) A contract for the sale or supply of coal, whether made before or after the passing of this Act, shall not, unless the terms of the contract otherwise provide, be void or

unenforceable as between the parties by reason that it cannot be performed without contravening the provisions of a scheme in force under this Part of this Act.[1]

(2) Where the output of a coal mine exceeds during any period the quota of that mine for that period, the owner of the mine shall not be liable to any penalty under any district scheme, nor shall any deduction be made from the quota of the mine for any subsequent period, in respect of the excess, if it is adjudged by the persons having power under the scheme to impose the penalty or make the deduction or, in the event of an arbitration, by the arbitrator,—

(a) that the excess was solely occasioned by the performance of contracts made before the eleventh day of December, nineteen hundred and twenty-nine;

(b) that the excess was reasonably necessary for the performance of those contracts; and

(c) that, having regard to the provisions of the central scheme, the imposition of the penalty or the making of the deduction, as the case may be, can, without substantial injury to the interests of the owners of other coal mines in the district, be dispensed with.[2]

(3) The owner of a coal mine shall not be liable to any penalty under any district scheme by reason of the fact that he has, in pursuance of any contract, sold or supplied coal at a price below the minimum price determined in respect of that coal under the scheme at the time of the sale or supply, unless the price at which the coal was contracted to be sold or supplied was lower than the minimum price determined in respect thereof under the scheme at the time when the contract was made, or, where no minimum price had then been determined in respect of the coal, unless it is adjudged by the persons having power under the scheme to impose the penalty, or, in the event of an arbitration, by the arbitrator, that the quantity of coal contracted to be sold or supplied is greater, or the period over which the coal was contracted to be sold or supplied is longer than it would have been if no party to the contract had anticipated that the price would be regulated under the scheme.[3]

[1] This is a somewhat wide provision. It protects the wholesaler's contracts in connection with the retail trade, as well as contracts between collieries and the wholesale trade. It is operative both retrospectively and in the future.

[2] This sub-section enables a colliery to carry out its earlier contracts if entered into prior to December 11, 1929. Apparently a colliery can either cancel all contracts under sub-section 1 or fulfil them without penalty under sub-section 2, subject to the provisions of clauses 1—3.

As to the effect of clauses 1, 2 and 3 it is quite clear that the provisions of clauses 1 and 2 would supply an ample answer to any proceedings for excessive output, but clause 3 also contains conditions which must be complied with,

and these conditions can give rise to questions of some difficulty. A coal owner might quite innocently exceed his output and amply fulfil the conditions of clauses 2 and 3 and yet the "imposition of the penalty or the making of the deduction" might result in substantial injury to other coal mines. The whole sub-section may give rise to questions of some difficulty.

[3] **Where a minimum price is determined.**

A coal owner can satisfy a contract at a price below the minimum by sale or supply, if the contract was made before a minimum was fixed. If the price is lower than the minimum at the date when the contract is made then he is liable to a penalty. As the contract in the latter case is illegal it cannot be enforced. The whole section appears to be governed by the words "at the time when the contract was made."

Where no minimum price is determined.

In this case the coal owner is not liable if he supplies coal in pursuance of a contract when no minimum price had been determined but one is subsequently fixed, unless it is clear on the contract that any party thereto was anticipating a regulation of the selling price, and was contracting ahead of his requirements in order to meet such regulated price.

Committees of investigation.

5.—(1) There shall be constituted a national committee of investigation consisting of nine members, which shall be charged with the duty of investigating any complaint made with respect to the operation of the central scheme, and there shall also be constituted for every district a district committee of investigation consisting of five members, which shall be charged with the duty of investigating any complaint made with respect to the operation of the district scheme for the district for which the committee is constituted:

Provided that no such committee shall be empowered to investigate a complaint which could be referred to arbitration by the complainant under the provisions of any such scheme.[1]

(2) The chairman and other members of every committee of investigation shall be persons appointed by the Board of Trade, and, of the members of the committee other than the chairman, one half shall be persons appointed to represent the interests of consumers of coal, and—

(a) in the case of the national committee two shall be persons appointed to represent owners of coal mines in Great Britain and the other two shall be persons appointed to represent workers employed in or about such coal mines;

(b) in the case of a district committee one shall be appointed to represent the owners of coal mines in the district and the other shall be appointed to represent workers employed in or about such coal mines;

and before appointing any person as a representative of any interest, the Board shall consult such bodies as appear to them to represent that interest.

(3) The meetings and procedure of every committee of

investigation shall be regulated in accordance with directions issued by the Board of Trade for the purpose.

(4) The Board of Trade may appoint a secretary to each committee of investigation, and each such committee may employ such accountants, officers and servants as the Board may, with the approval of the Treasury, determine, and there shall be paid by the Board such remuneration (if any) to the chairman of the committee, such travelling and subsistence allowances to the chairman and members of the committee, such remuneration to the secretary so appointed and to the accountants, officers and servants so employed, and such other expenses of the committee, as the Board, with the approval of the Treasury, may determine, and any expenses of the Board under this subsection shall be defrayed out of moneys provided by Parliament.[2]

(5) Where a committee of investigation is required in pursuance of this section to investigate a complaint with respect to the operation of a scheme, the council or executive board charged with the duty of administering the scheme shall furnish the committee with such returns, accounts and other information relating to the operation of the scheme as the committee considers relevant to the investigation.

(6) If after investigating any complaint made with respect to the operation of a scheme, a committee of investigation is of opinion that any provision of the scheme is contrary to the public interest or ought to be amended on the ground that it is unfair or inequitable in its operation, it shall be the duty of the committee to report the matter to the Board of Trade, and if, after considering the report and consulting such persons as appear to them to be affected, the Board agree with the opinion of the committee, the Board shall make recommendations to the council or executive board charged with the duty of administering the scheme, with a view to the rectification of the matter complained of.

The Board of Trade may hold inquiries for the purpose of assisting them to consider any report made to them under this subsection by a committee of investigation in like manner as they are empowered under section twenty-two of the Mining Industry Act, 1920, to hold inquiries for the purposes of that Act, and that section shall apply with respect to inquiries held by the Board under this subsection accordingly.[3] 10 & 11 Geo. 5, c. 50.

(7) If after the Board of Trade have, under the provisions of the last foregoing subsection, made recommendations to the executive board charged with the duty of administering any district scheme, the matter complained of is not rectified to the satisfaction of the Board, the Board may, by order published

in the London Gazette, direct that the scheme shall cease to have effect under this Act and the Board shall, subject as hereinafter provided, make a new scheme in substitution therefor :

Provided that, if and so long as the Board of Trade and the central council are both satisfied that, under arrangements made by any voluntary association or otherwise by owners of coal mines in the district, the provisions of the central scheme are being complied with in that district not less effectively than in other districts, the Board shall not, except at the request of the central council, make such a new scheme as aforesaid; and during any period during which, by reason of such arrangements as aforesaid, a district scheme is not in force under this Act for any district, the provisions of this Act relating to the central scheme and the provisions of the central scheme shall, as respects that district, have effect as if for references therein to the executive board or to any other persons having functions under the district scheme there were substituted references to the association by which, or owners by whom, the arrangements were made.[4]

(8) If after investigating any complaint made with respect to the operation of a scheme, a committee of investigation is of opinion that any act or omission of any persons in respect of their functions under the scheme is having or is likely to have an effect contrary to the public interest or ought not to be permitted on the ground that it is unfair or inequitable, it shall be the duty of the committee to make representations with respect thereto to the persons having power under the scheme to rectify the matter, and if, upon such representations being made, the matter is not dealt with to the satisfaction of the committee, the committee may refer the matter to a single independent arbitrator to be appointed by agreement between the committee and the body charged with the duty of administering the scheme, or, in default of agreement, by the Board of Trade, and the persons having power under the scheme to give effect to the decision shall comply therewith and exercise their functions under the scheme in conformity with the decision.[5]

(9) A committee of investigation, upon referring any matter to arbitration in accordance with the last foregoing subsection, shall make a report thereon to the Board of Trade, and shall also report to the Board the arbitrator's decision and what steps have been taken to comply therewith, and the Board shall have power to make in the scheme such amendments (if any) as they think necessary for securing that the scheme will be administered in conformity with the decision, and in particular may by such amendments alter the composition of the body charged with the

administration of the scheme as if the scheme had been made by the Board.[6]

(10) Any person aggrieved—

(a) by the neglect or refusal of a committee of investigation to report to the Board of Trade that any provision of a scheme is contrary to the public interest, or ought to be amended on the ground that it is unfair or inequitable in its operation, or where such a report has been made is aggrieved by any act or omission of the Board of Trade in relation thereto; or

(b) by the neglect or refusal of a committee of investigation to refer a complaint to arbitration under sub-section (8) of this section;

may, with the leave of the Railway and Canal Commission, appeal to that Commission who shall have power to make such order as they think fit.[7]

(11) The Board of Trade shall make regulations for the conduct of references to arbitration under this section, and such regulations shall make provision as to the persons by whom the remuneration of the arbitrator is to be defrayed, and all such regulations shall be laid before Parliament.[8]

[1] The committees of investigation are to consider matters of "complaint" only. Apparently they are not empowered to consider matters of "acts or omissions" by executive boards which are the subject of complaint by owners or by the council which are the subject of complaint by executive boards. These are matters for the arbitrator. What particular matter of complaint is in fact strictly limited to this section will be a matter for judicial decision. The proviso is not clear on this point. It is presumed that in fact the limitation imposed by this section applies to matters of an industrial nature, or matters affecting the wholesale and retail trades owing to the nature of the constitution of the committees as set out in sub-section 2.

[2] The levies referred to in sections 2 and 3 are not to be applied to any remuneration payable under this section.

[3] It is clear from this sub-section that the object of the committee's investigations are to ascertain whether the complaint is justified on grounds :—

(1) That the scheme is contrary to public interest.

(2) That the scheme is unfair or inequitable.

The scope of their inquiry is therefore limited.

The provisions of section 22 of the Mining Industry Act, 1920, are as follows :—

Power to hold inquiries.

(1) The Board of Trade may hold such inquiries as they consider necessary or desirable for the purposes of this Act, and the Board of Trade and, if authorised by the Board of Trade, the person appointed to hold any such inquiry may, by order, require any person, subject to the payment or tender of the reasonable expenses of his attendance, to attend as a witness and give evidence, or to produce any documents in his possession or power which relate to any matter in question at the inquiry, and are such as would be subject to production in a Court of law, and, if any person fails without reasonable

excuse to comply with any of the provisions of any such order, he shall be liable on summary conviction to a fine not exceeding five pounds, and the person holding the inquiry shall have power to take evidence on oath and for that purpose to administer oaths.

(2) Notices of inquiries may be given and published in accordance with such general or special directions as the Board of Trade may give.

(3) The powers of the Board of Trade under this section shall be in addition to and not in derogation of any powers of holding inquiries transferred to the Board from any other Government department under this Act.

[4] This gives the Board of Trade wide administrative powers. The proviso authorises the retention of voluntary schemes subject to the condition set out in the sub-section. It is somewhat difficult to appreciate the full effect of this proviso, because although it is a proviso to the provision dealing with the Board of Trade's statutory administrative powers over district schemes, it presupposes the existence of a voluntary scheme existing at the same time as a district scheme which is under the process of rectification of some part of its subject-matter. And it is a matter for consideration how far in practice a voluntary scheme can actually be in existence and effective side by side with a district scheme. As by section 1, sub-section 3 a voluntary association have the power to submit a voluntary scheme, which when approved becomes a district scheme, the actual effect of this sub-section becomes more difficult to understand on a strict interpretation of the statute as section 1, sub-section 2 in effect abolishes voluntary schemes, and this would certainly be the case when a voluntary scheme obtains the sanction of the Board of Trade thereby becoming a district scheme. This proviso only applies to " a " district. See the Schedule, Part I, *post*, p. 139.

[5] The object of this sub-section is to prevent abuses. The wording, however, is somewhat peculiar. The subject-matter of complaint is " any act or omission of any persons *in respect of their functions under the scheme* "; this is a very wide provision, but is limited to some extent by the last three lines of the sub-section, by which " the persons *having power* under the scheme to give effect *to the decision shall comply* therewith and *exercise their functions* under the scheme in conformity with the decision." These words suggest that the " any persons " referred to in the earlier part of the section are " the persons having power " who shall comply with the decision of the committee of investigation. If this interpretation is a correct one it is a provision against the abuse of the provisions of the Act by the persons exercising powers of control under the scheme. On the other hand it may be argued that the persons referred to are those who in effect are subject to the provisions of the scheme, namely, " owners of coal mines."

[6] The fact that after reference to the Board of Trade of the arbitrator's decision, the Board of Trade may alter " the composition of the body " charged with the administration of the scheme suggests that the former interpretation in sub-section 8 as to the " persons " affected by that sub-section is the correct one and that sub-section 8 was introduced with the object of preventing abuses by those in control of district schemes.

[7] This gives a right to persons aggrieved to appeal to the Railway and Canal Commission on the grounds that :—

1. A report has not been made to the Board of Trade under this section.
2. That the Board of Trade have not acted on any such representation.
3. A matter has not been referred to an arbitrator.

Presumably this gives the Commission jurisdiction to hear and decide upon a reference in place of an arbitrator appointed under the provisions of sub-section 8 if no such arbitrator has in fact been appointed. The provision is sufficiently wide to give the Commission full jurisdiction to inquire into everything affecting the questions in issue.

It is arguable that actually this section goes further and gives the Tribunal very wide jurisdiction on matters of appeal arising out of questions in issue under the provisions of section 5. As sub-section 9 empowers the Board of Trade to act on the arbitrator's decision, and as by sub-section 10 (b) there is an appeal to the Railway and Canal Commission on any "act or omission" based on a report to the Board, and as an arbitration can only arise on such a report, it may fairly be argued that by this provision the Railway and Canal Commission are final arbiters on matters in dispute under section 5.

[8] This sub-section does not provide that Parliament shall approve the remuneration of the arbitrator.

Information to be furnished to Board of Trade.

6. It shall be the duty of the central council as respects the central scheme, and of the executive board for any district as respects the scheme for that district, to furnish to the Board of Trade, in such manner and form as the Board may direct, such returns, accounts and other information with respect to the operation of the scheme as the Board may at any time require.

Report to be laid before Parliament.

7. The Board of Trade shall in the year nineteen hundred and thirty-one and each subsequent year lay before Parliament a report upon the operation of all the schemes for the time being in force under this Act.[1]

[1] This section should be compared with section 10, which provides that the Act is only to remain in force until December 31, 1932, and suggests that an extension of the Act may take place on that date.

Information obtained under Act not to be disclosed.

8. No information with respect to any particular undertaking shall be included in any report published under this Part of this Act by the Board of Trade, the central council, an executive board, the national committee of investigation, or a district committee of investigation, unless the owner of the undertaking agrees thereto, and any person who obtains any information in the exercise of the powers conferred upon the council or upon any executive board by any scheme made in pursuance of this Part of this Act, or conferred upon any such committee by this Part of this Act, shall be required to make a declaration of secrecy in such form as may be prescribed by the Board of Trade, and any person who discloses any information so obtained by him shall be guilty of a misdemeanour and liable, on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine, or on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds, or to both such imprisonment and fine :

Provided that nothing in this section shall apply to the

publication or disclosure of any information in so far as it is required to be published or disclosed for the purposes of legal proceedings (including arbitrations) under this Part of this Act or any scheme made thereunder or for any report of such proceedings, or in so far as it is required or authorised by this Part of this Act or any scheme made thereunder to be published or disclosed to the Board of Trade, the central council, a committee of investigation or an executive board.

The importance of this section is that although the Board of Trade are prohibited from disclosing any information they may obtain in any published report, there is nothing prohibiting the Board of Trade from requiring any information to which they are entitled under the Act, being published or disclosed to them.

The penal provision is necessary to prevent leakage of information which might be of great value. It adds another crime to the statute book.

Offences and penalties.

9.—(1) If any person contravenes or fails to comply with any provision of this Part of this Act or of a scheme in force thereunder, and no penalty for the contravention or failure is expressly provided by this Part of this Act or the scheme, he shall be liable on summary conviction to a fine not exceeding one hundred pounds, and to a further fine not exceeding twenty pounds for every day on which the contravention or failure occurs or continues.[1]

(2) Where an offence under this Part of this Act or a scheme in force thereunder, committed by a corporation, is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of, any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of an offence and shall be liable to be proceeded against and punished accordingly.[2]

[1] This section only applies when no penalty is laid down by a scheme. A contravention or failure to comply with the provisions of Part I of the Act or the provisions of a scheme is made a criminal offence.

[2] This makes an official of a corporation equally liable to prosecution. As to who is an official of a corporation see the Company's Act, 1929, s. 365, sub-s. 2.

Duration of Part I.

10.—(1) This Part of this Act shall continue in force until the thirty-first day of December, nineteen hundred and thirty-two, and no longer, unless Parliament otherwise determines :

Provided that the expiration of this Part of this Act shall not—

(a) affect the previous operation of, or anything duly done or suffered under, this Part of this Act; or

(b) affect any right, privilege, exemption, obligation, or

liability acquired, accrued, or incurred under this Part of this Act; or

(c) affect any penalty or punishment incurred under this Part of this Act; or

(d) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty or punishment may be imposed as if this Part of this Act had not expired.

(2) The provisions of this Part of this Act making it an offence to disclose information shall continue in force notwithstanding the expiration of this Part of this Act.

The proviso to sub-section 1, although necessary even if the Act becomes time expired, suggests a probability of the Act continuing in force.

PART II.

REORGANISATION OF COAL MINING INDUSTRY.

Constitution of Coal Mines Reorganisation Commission.

11.—(1) There shall be constituted a Coal Mines Reorganisation Commission (hereafter in this section referred to as "the Commission"), which shall consist of five commissioners appointed by the Board of Trade for such period and subject to such conditions as may be determined by the Board, and the Board shall appoint one of the commissioners to be chairman.

(2) A person shall be disqualified for being appointed, or being, a commissioner so long as he is a Member of the Commons House of Parliament.

(3) A commissioner shall within three months after his appointment sell or dispose of any interest or shares or securities which he may hold in his own name or in the name of a nominee for his own benefit in any undertaking carrying on in Great Britain the business of coal mining or supplying or selling coal or the manufacture or sale of by-products of coal or machinery or plant for coal mining; and it shall not be lawful for a commissioner while he holds office to acquire for his own benefit any interest or shares or securities in any such undertaking and if a commissioner, under any will or succession or otherwise, becomes entitled for his own benefit to any interest or shares or securities in any such undertaking he shall sell or dispose of it or them within three months after he has so become entitled thereto.[1]

(4) If a commissioner becomes disqualified for holding office, or fails to comply with the provisions of the last foregoing sub-

section, or becomes in the opinion of the Board of Trade unfit to continue in office or incapable of performing his duties under this Act, the Board shall forthwith declare his office to be vacant, and shall notify the fact in such manner as they think fit, and thereupon the office shall become vacant.

(5) For the purposes of any business for which a quorum of the commissioners is required by this Act to be present, three commissioners personally present shall be a quorum, but, save as aforesaid, the Commission shall have power to regulate their own procedure, and may act notwithstanding a vacancy in their number.

(6) The Board of Trade may appoint a secretary to the Commission and the Commission may employ such officers and servants as the Board may, with the approval of the Treasury, determine, and there shall be paid by the Board such remuneration to the commissioners and to the secretary, officers, and servants of the Commission and such other expenses of the Commission as the Board may, with the approval of the Treasury, determine, and any expenses of the Board under this subsection shall be defrayed out of moneys provided by Parliament.

(7) Any document purporting to be issued by the Commission and to be signed by the secretary or any person authorised to act in that behalf shall be received in evidence and be deemed to have been so issued without further proof unless the contrary is shown.

[1] A similar condition applied on the appointment of a Railway Commissioner under the provisions of section 5 of the Regulation of Railways Act, 1875.
The Coal Mines Reorganisation Commission is a quasi-judicial body.

General functions of Coal Mines Reorganisation Commission.

12.—(1) It shall be the duty of the Coal Mines Reorganisation Commission (hereafter in this section referred to as "the Commission") to further the reorganisation of the coal mining industry with a view to facilitating the production, supply, and sale of coal by owners of coal mines, and for that purpose to promote and assist, by the preparation of schemes and otherwise, the amalgamation of undertakings consisting of or comprising coal mines where such amalgamations appear to the Commission to be in the national interest.[1]

(2) The Commission may hold such inquiries as they consider necessary or desirable for the discharge of their functions under this Act, and, in respect of any meeting of the Commission at which a quorum of the commissioners is present for the purpose of any such inquiry, the Tribunals of Inquiry (Evidence) Act, 1921, (other than paragraph (a) of section two thereof) shall apply to the Commission as if it were a tribunal established in

11 & 12 Geo. 5, c. 7.

manner provided by that Act and as if that Act had been applied thereto in the manner thereby provided.[2]

(3) The Commission may from time to time employ such technical and professional agents as they consider necessary or desirable for the discharge of their functions under this Act, and, subject as hereinafter provided, there shall be paid by the Board of Trade such remuneration to the agents so employed as the Board may, with the approval of the Treasury, determine, and the expenses of the Board under this subsection shall be defrayed out of moneys provided by Parliament :

Provided that a sum certified by an accountant appointed by the Board of Trade to be equal to the amount of any expenses properly incurred by the employment of such agents as aforesaid for the purpose of promoting or assisting the amalgamation of any undertakings shall, in the event of the undertakings being amalgamated, be repaid to the Board of Trade by the owners of the amalgamated undertaking.[3]

[1] The functions of the Commission in relation to promoting the amalgamation of colliery undertakings are limited to the fact that any such amalgamation will be in the national interest and will result in facilitating the production, supply and sale of coal. The Commission have also a further duty to reorganise the coal mining industry in order to give effect to the above objects.

[2] The general effect of the Tribunals of Inquiry (Evidence) Act, 1921, excepting section 2, paragraph (a) thereof, is as follows :—

The tribunal has all such powers, rights and privileges as are vested in the High Court or the Court of Session in Scotland or in a Judge of either such Court on the occasion of an action in respect of the following matters :—

(a) The enforcing the attendance of witnesses and examining them on oath.
(b) Compelling the production of documents.
(c) Issuing a commission or request for examining witnesses abroad.
(d) A summons signed by a member of a tribunal is effective for enforcing the attendance of witnesses and compelling the production of documents.

In addition, if any person being in attendance as a witness refuses to take the oath, or to produce any document, or does any other thing which if the Tribunal were a Court of law would be equivalent to contempt of Court, his offence may be certified by the chairman of the tribunal for reference to a superior Court for an inquiry.

The public are not to be excluded unless in the public interest, and the tribunal have the right to allow representation before them by counsel or solicitors, or to refuse such representation.

It is a matter worthy of comment that the excluded paragraph (a) refers to the tribunal's right to certify as an offence the non-attendance of a witness who has been summoned to appear and makes default in attending.

[3] The effect of the proviso to this sub-section is that however unwilling two undertakings may be to amalgamate, once the Board of Trade employ technical or professional agents in connection with an amalgamation scheme, then if the scheme becomes effective the colliery undertakings, when amalgamated, have to repay the expenses so incurred by the Board of Trade.

Amendments of Part I of 16 & 17 Geo. 5, c. 28.

13.—(1) If it appears to the Coal Mines Reorganisation Commission that it is expedient for the purpose of promoting the more economical and efficient working, treating or disposing

of coal that an amalgamation scheme or an absorption scheme, under Part I of the Mining Industry Act, 1926 (hereinafter in this section referred to as "the Act of 1926"), should be prepared and submitted with respect to any two or more undertakings consisting of or comprising coal mines, the Commissioners shall require the owners of those undertakings to prepare and submit to the Board of Trade an amalgamation scheme or absorption scheme with respect to those undertakings framed in accordance with the provisions of Part I of the Act of 1926, and if the owners fail so to submit such a scheme within such a time as may have been specified by the Commissioners, the Commissioners shall themselves prepare and submit such a scheme to the Board of Trade, and for the purposes of that Part of that Act any scheme so prepared and submitted by the Commission shall be deemed to have been prepared and submitted in manner provided by subsection (1) or (2), as the case may be, of section one of that Act, and that Act shall apply accordingly :

Provided that—

(a) no such scheme of amalgamation shall provide, without the consent of the owner of the undertaking, for the separation of the treating or disposing of coal from the working thereof, or, in the case of an undertaking of which the primary object is not coal mining, for the separation from the undertaking of any coal mine worked as ancillary to such primary object;

(b) no coal mine belonging to a company whereof all the shares are held by the owner of an undertaking of which the primary object is not coal mining shall, so long as it is worked as ancillary to such primary object, be amalgamated or absorbed by virtue of a scheme prepared under this section without the consent of the owner of that undertaking.[1]

(2) In the consideration by the Railway and Canal Commission of a scheme submitted to the Board of Trade under this section, the following paragraph shall be substituted for paragraph (a) of the proviso to subsection (2) of section seven of the Act of 1926 (which relates to consideration of schemes by the Commission) :—

"(a) shall not confirm a scheme unless satisfied—

(i) that it would be in the national interest to do so, and

(ii) in the case of an amalgamation scheme that the scheme

(a) will result in lowering the cost of production or disposal of coal, and

(b) will not be financially injurious to any of the undertakings proposed to be amalgamated, unless the scheme contains provisions for the purchase, at a price to be fixed in default of agreement by arbitration, of any such undertaking; and

(iii) that the terms of the scheme are fair and equitable to all persons affected thereby; and " [2]

(3) If the owner of any undertaking (in this subsection referred to as the " transferor undertaking ") proposed by any scheme submitted by the Coal Mines Reorganisation Commission to be amalgamated with, or absorbed in, any other undertaking (in this subsection referred to as the " transferee undertaking ") satisfies the Railway and Canal Commission that any property, whether real or personal, belonging to the transferor undertaking formed, at the date of the passing of this Act, a reserve which, when the scheme was submitted, was not required for the efficient carrying on of the transferor undertaking, the Railway and Canal Commission shall not confirm the scheme except after making such modifications, if any, as may be necessary for securing that that property will not be transferred to the transferee undertaking.[3]

(4) For the purposes of any scheme under Part I of the Act of 1926 the value of the undertaking of every constituent or absorbed company shall be assessed upon the basis of what would have been the value thereof as between a willing buyer and a willing seller if this Act had not been passed, and no such scheme shall be submitted to the Board of Trade under the said Part I unless the Coal Mines Reorganisation Commission have certified that such values have been so assessed for the purposes of that scheme.[4]

(5) Where a scheme is referred by the Board of Trade to the Railway and Canal Commission under section six of the Act of 1926, the Coal Mines Reorganisation Commission shall be entitled to appear and be heard at any proceedings in connection with the scheme.

(6) No scheme shall be submitted or certificate granted by the Commission under this section except in pursuance of a decision made at a meeting at which a quorum of the Commissioners is present.

(7) Where an amalgamation scheme submitted to the Board of Trade by the owners of two or more undertakings under subsection (1) of section one of the Act of 1926 is certified by the Coal Mines Reorganisation Commission to be in the national interest, and the owners submitting the scheme represent to the

Board that it is unnecessary for the purpose of giving effect to the scheme that it should be confirmed by the Railway and Canal Commission under the Act of 1926, it shall not be necessary for the Board to refer the scheme to the Railway and Canal Commission under that Act, but if the Board certify that the provisions of the scheme as to any debentures or as to the issue of any share or loan capital are reasonably required for the purpose of the amalgamation, subsection (2) of section five of the Act of 1926 (which grants certain exemptions from stamp duty in respect of schemes confirmed by the Railway and Canal Commission) shall apply in respect of the scheme and of anything done in pursuance thereof as if the scheme had been confirmed by the Railway and Canal Commission.[5]

(8) This section shall be construed as one with Part I of the Act of 1926.

[1] (1) As to amalgamation schemes under "the Act of 1926," see p. 70, *ante*.

(2) As to absorption schemes under "the Act of 1926," see p. 74, *ante*.

The scheme can only be given effect to if it will result in the more economic and efficient working, treating or disposing of coal. As to what is "economic and efficient working, treating or disposing of coal," see p. 68, *ante*.

Once the Commission determine that there is need of a scheme for the statutory reasons laid down then the owners are required to prepare a scheme, or submit to a scheme as presented by the Commissioners in accordance with "the 1926 Act"; see sections 1, sub-sections 1 and 2, *ante*, p. 67.

The exceptions laid down by the proviso prevent any possibility of breaking up the undertaking itself or separating a subsidiary colliery company from another industrial undertaking, *e.g.*, an iron mine, where coal mining is only subsidiary to the objects of the other undertaking.

[2] As to the original proviso to sub-section 2 of section 7 of "the 1926 Act," see *ante*, p. 81.

It must be remembered that the substitution of paragraph (a) above set out for that contained in "the 1926 Act" only applies to cases instituted under section 13 of the Coal Mines Act, 1930, namely, those cases in which compulsion has been exercised. In the case of absorption schemes it is only necessary to prove that the scheme is in the national interest. The conditions attaching to amalgamation schemes are the further provisions contained in clause (a) (ii), *supra*.

The fact must not be lost sight of that in applications made voluntarily under "the 1926 Act" the provisions of that Act still apply. In cases where coal owners feel that for particular reasons their undertakings may be subjected to a scheme under section 13 of the Coal Mines Act, 1930, they would be well advised to prepare a scheme as soon as possible so as to anticipate any possibility of being forced into a position which may not be beneficial to their undertaking.

Further, a colliery undertaking once it has been subjected to a scheme has no remedy unless on the facts they can satisfy the Railway and Canal Commission that the provisions of sub-section 2 (a) (ii) are not complied with.

[3] This protects undertakings, which may be subjected to absorption or amalgamation, in their reserves, which are not to be included under any proposed scheme. The word "reserve" is a wide term and does not necessarily mean cash reserves, as the "reserves" may be real or personal or both. It must be noted that the time at which the "reserve" was formed is of

importance. It is a "reserve" in existence "at the passing of this Act" and which "when the scheme was submitted" was not required for the efficient carrying on of the undertaking.

[4] It is not clearly laid down under this sub-section as to the actual date when the undertaking is to be "assessed." The words "shall be assessed upon the basis of what would have been the value" "if this Act had not been passed" suggest one of three alternatives: (a) that the date contemplated by the Act was the date immediately before it came into force; (b) that the date contemplated is the date when the Act came into force; (c) the date of the assessment. This point is arguable and not free from doubt. The date under discussion may be a matter of some considerable importance from a financial point of view.

[5] As to the effect of sub-section 2 of section 5 of "the Act of 1926," see p. 781, *ante*.

Presumably the application would proceed in the ordinary manner and after approval by the Board of Trade the Coal Mines Reorganisation Commission would be asked to certify in accordance with the provisions of this sub-section.

Should the Commission not certify then the owners making the application would have to proceed by way of reference to the Railway and Canal Commission.

PART III.

HOURS OF WORK.

Temporary amendment of 8 Edw. 7, c. 57, s. 3. 16 & 17 Geo. 5, c. 17.

14.—(1) During the continuance of the Coal Mines Act, 1926, section three of the Coal Mines Regulation Act, 1908, shall have effect as if for the words "one hour" there were therein substituted the words "half an hour":

Provided that, if an application, by agreement between representative organisations of the owners of and the workers employed in or about the coal mines in any district, is made to the Board of Trade in that behalf with the approval of the Mining Association of Great Britain and the Miners' Federation of Great Britain, the Board of Trade shall make an order, which shall become effective forthwith, that the substitution of the words "half an hour" for the words "one hour" in section three of the Coal Mines Regulation Act, 1908, shall not apply as respects any mine in such district at which the daily hours below ground on an average taken over the twelve weekdays in any fortnight do not exceed the daily hours permissible under section one of the Coal Mines Regulation Act, 1908,[1] as amended by the Coal Mines Act, 1919,[2] by more than the extension of half an hour made under section three of the Coal Mines Regulation Act, 1908, as amended by the Coal Mines Act, 1926,[3] and this section.

8 Edw. 7, c. 57.

At any mine where an extension of time is in any week made under the said section three, the workmen, by agreement between representatives of employers and workmen, may, notwithstanding

9 & 10 Geo. 5, c. 48.

anything in the Coal Mines Regulation Act, 1908, as amended by any subsequent enactment, begin their period of work on the Saturday of that week before twenty-four hours have elapsed since the beginning of their last period of work, so long as at least eight hours have elapsed since the termination thereof.

(2) This section shall come into operation at the expiration of the period of four months from the passing of this Act.

[1] Sections 1 and 3 of the Coal Mines Regulation Act, 1908, are as follows :—

1. *Limit of hours of work below ground in coal mines.*]—(1) Subject to the provisions of this Act a workman shall not be below ground in a mine for the purpose of his work, and of going to and from his work, for more than [seven hours] during any consecutive twenty-four hours.

(2) No contravention of the foregoing provisions shall be deemed to take place in the case of a workman working in a shift if the period between the times at which the last workman in the shift leaves the surface and the first workman in the shift returns to the surface does not exceed [seven hours]; nor shall any contravention of the foregoing provisions be deemed to take place in the case of any workman who is below ground for the purpose of rendering assistance in the event of an accident, or for meeting any danger or apprehended danger, or for dealing with any emergency or work uncompleted through unforeseen circumstances which requires to be dealt with without interruption in order to avoid serious interference with ordinary work in the mine or in any district of the mine, or, in the case of stallmen when engaged in the process of taking down top coal in square or wide work in the thick coal of the South Staffordshire district, so long as their presence in or near the stall is necessary to ensure safety.

(3) The owner, agent, or manager of every mine shall fix for each shift of workmen in the mine the time at which the lowering of the men to the mine is to commence and to be completed, and the time at which the raising of the men from the mine is to commence and to be completed, in such a manner that every workman shall have the opportunity of returning to the surface without contravention of the foregoing provisions of this section, and shall post and keep posted at the pit head a conspicuous notice of the time so fixed, and shall make all arrangements necessary for the observance of those times in lowering and raising the men.

(4) The interval between the times fixed for the commencement and for the completion of the lowering and raising of each shift of workmen to and from the mine shall be such time as may for the time being be approved by the inspector as the time reasonably required for the purpose. Provided that, in the event of any accident to the winding machinery, or other accident interfering with the lowering or raising of workmen, the interval may temporarily be extended to such extent as may be necessary; but in any such case the owner, agent, or manager of the mine shall on the same day send notice of the extension and the cause thereof to the inspector, and the extension shall not continue beyond such date as may be allowed by the inspector.

(5) In the event of the owner, agent, or manager feeling aggrieved by the decision of the inspector under the last foregoing subsection, the matter shall, in accordance with regulations as to procedure and costs made by the Secretary of State, be referred to the decision of a person appointed by the judge of county courts for the district, or in Scotland by the Sheriff of the county, in which the mine is situate, whose decision shall be final; but until such decision is given the times approved by the inspector shall be in force as respects the mine.

(6) A repairing shift of workmen may, notwithstanding the provisions of this section, for the purpose of avoiding work on Sunday, commence their period of work on Saturday before twenty-four hours have elapsed since the

commencement of their last period of work, so long as at least eight hours have elapsed since the termination thereof.

(7) For the purposes of this Act, the expression "workman" means any person employed in a mine below ground, who is not an official of the mine (other than a fireman, examiner, or deputy), or a mechanic or horse-keeper, or a person engaged solely in surveying or measuring; and any number of workmen whose hours for beginning and terminating work in the mine are approximately the same shall be deemed to be a shift of workmen.

Provided that—

(a) In the case of a fireman, examiner, or deputy, *onsetter*, pump-minder, fanman, or furnace-man, the maximum period for which he may be below ground under this Act shall be [eight hours]; and

(b) Where the work of sinking a pit or driving a cross-measure drift is being carried on continuously, no contravention of the provisions of this Act shall be deemed to take place as respects any workman engaged on that work if the number of hours spent by him at his working place does not exceed six at any one time, and the interval between the time of leaving the working place and returning thereto is in no case less than twelve hours.

If any question under this section arises (otherwise than in legal proceedings) whether any person is a workman or is a workman of any particular class, that question shall be referred to the Secretary of State, and his decision shall be final.

3. *Power to extend hours of work on a limited number of days in a year.*]—(1) The time fixed by this Act as the time during which the workmen in a mine may be below ground for the purpose of their work and of going to and from their work may be extended as respects any mine by the owner, agent, or manager of the mine, *on not more than sixty days in any calendar year* by not more than one hour a day, and on any day on which an extension of time is made in accordance with this section as respects any mine the time as so extended shall be substituted for the purposes of this Act as respects that mine for the time as fixed by this Act.

2 The material part of the Coal Mines Act, 1919, is as follows:—

1. *Reduction of hours of employment below ground.*]—The Coal Mines Regulation Act, 1908, in its application to mines in which coal is worked shall have effect subject to the following modifications—

(a) [as from the sixteenth day of July nineteen hundred and nineteen] this Act shall have effect as if in subsections (1) and (2) of section one thereof for "eight hours" there were substituted "seven hours," and as if in proviso (a) to subsection (7) of section one thereof for "nine hours and a half" there were substituted "eight hours"; and

(b) if, after the end of the year nineteen hundred and twenty a Resolution is passed by both Houses of Parliament that the economic position of the coal industry is such as to allow a further reduction of working hours, then, as from the thirteenth day of July nineteen hundred and twenty-one, the Act shall have effect as if in subsections (1) and (2) of section one thereof for "eight hours" there were substituted "six hours," and as if in proviso (a) to subsection (7) of section one thereof for "nine hours and a half" there was substituted "seven hours"; and

(c) in proviso (a) to subsection (7) of section one thereof the word "onsetter" shall be omitted:

Provided that the Secretary of State, after consultation with the workmen affected or their representatives, may, in the case of persons employed on work which required to be carried on continuously by day and night, allow them to be employed below ground for not more than eight hours during any consecutive twenty-four hours.

3 The material part of the Coal Mines Act, 1926, is as follows :—

Temporary amendment of 8 *Edw.* 7, *c.* 57, *s.* 3.]—During the continuance of this Act, section three of the Coal Mines Regulation Act, 1908, shall have effect as if the words " on not more than sixty days in any calendar year " and subsection (2) thereof were omitted therefrom.

PART IV.

COAL MINES NATIONAL INDUSTRIAL BOARD.

Power to constitute Coal Mines National Industrial Board and functions thereof.

15.—(1) The Board of Trade may by order constitute a Coal Mines National Industrial Board (in this section referred to as the " National Board ") consisting of seventeen members appointed by the Board of Trade, so, however, that before appointing the members of the National Board other than the chairman, the Board of Trade shall consult the Mining Association of Great Britain as to six, the Miners' Federation of Great Britain as to six, the Federation of British Industries and the Association of British Chambers of Commerce as to one, and each of the following bodies as to one, that is to say—

The General Council of the Trade Union Congress;

The Co-operative Union;

The National Confederation of Employers' Organisations;

and the Chairman of the National Board shall not be a member of any of the bodies aforesaid.

(2) Before appointing any person to fill a vacancy among the members of the National Board, the Board of Trade shall consult the body (if any) which they were required by this section to consult before appointing his predecessor. If a member becomes in the opinion of the Board of Trade unfit to continue in office or incapable of performing his duties under this Act the Board shall forthwith declare his office to be vacant and shall notify the fact in such manner as they think fit and thereupon the office shall become vacant.

A member may resign his office by notice in writing under his hand given to the Board of Trade.

(3) The Board of Trade may appoint a secretary to the National Board, and there shall be paid by the Board of Trade such remuneration (if any) to the chairman, such travelling and subsistence allowances to the chairman and members and such remuneration to the secretary of the National Board, and such other expenses of the National Board, as the Board of Trade, with the approval of the Treasury, may determine, and any expenses of the Board of Trade under this subsection shall be defrayed out of moneys provided by Parliament.

(4) Any agreement between the owners of, and the workers employed in or about, the coal mines in any district providing for the regulation of wages or other conditions of labour through-

out the coal mines in the district may be sent to the National Board, and it shall be the duty of the National Board to record any agreement so sent.

(5) Where there exists, or is apprehended, any dispute between the owners of and the workers employed in or about the coal mines in any district as to the terms of a proposed agreement between such owners and workers providing for the regulation of wages or other conditions of labour throughout the coal mines in the district, and there has been a failure to settle the dispute in accordance with the arrangements existing in the district for the settlement thereof, either the owners or the workers may refer the dispute to the National Board who shall thereupon inquire into the dispute and report thereon to the owners and workers concerned.

(6) The Board of Trade may make rules regulating the procedure of the National Board, and those rules may, among other things, provide—

(a) for enabling the National Board to act notwithstanding any vacancy in their number;

(b) for the hearing of a reference in public or in private, at the discretion of the National Board.

(7) There shall not be included in any report or publication made or authorised by the National Board any information, obtained by the National Board in the course of a reference to them, as to any trade union or as to any particular undertaking, which is not available otherwise than through evidence given during the reference, except with the consent of the secretary of the trade union or of the owner of the undertaking in question, and if any individual member of the National Board or any person concerned in the reference, without such consent, discloses any such information, he shall be liable on summary conviction to a fine not exceeding one hundred pounds.

This section is permissive only. The Board of Trade "may by order" constitute the National Board. No agreement need be sent to the Board. Sub-section 4 is also permissive. It is clear from the provisions of the section that the Board when constituted will act as intermediaries in the case of an industrial dispute between owners and workers in coal mines.

PART V.

GENERAL.

Application of 52 & 53 Vict. c. 49.

16.—(1) The provisions of the Arbitration Act, 1889, shall not apply to any reference to the Coal Mines National Industrial Board, except in so far as any of the said provisions may be applied by the rules made under Part IV of this Act.[1]

(2) No scheme or rules approved or made under Part I of

this Act shall exclude the application of the Arbitration Act, 1889, to any arbitration held in pursuance of that Part of this Act except in so far as that Act is inconsistent with that Part of this Act :

Provided that, where on any such arbitration an award is stated in the form of a special case for the opinion of the court under paragraph (b) of section seven of that Act, the decision of the High Court thereon shall be final.[2]

Exclusion of 10 & 11 Geo. 5, c. 50, s. 5, sub-s. 2.

17. The expenses of the Board of Trade which are by this Act directed to be defrayed out of moneys provided by Parliament shall not be taken into account in computing the amount of the expenses of the Department of Mines for the purposes of the limit imposed by subsection (2) of section five of the Mining Industry Act, 1920, upon the expenses of that department.

[1] Unless any of the provisions are incorporated in the rules made by the Board of Trade the following main provisions would be excepted :—

1. That the submission is irrevocable.
2. That the provisions set out in the Schedule to the Act do not apply.
3. That there is no power to stay proceedings on a submission to the National Board.
   (It is questionable whether legal proceedings would, however, arise out of the matters submitted.)
4. That the powers of arbitrator to administer oaths or subpœna witnesses would not apply.
5. That there is no power to set aside any report of the National Board.
6. That there is no power of enforcing any report on submission to a Court or Judge.
7. That there is no power to award costs.

[2] This makes the High Court the final Court of appeal on any arbitration arising under Part I of the Act.

Interpretation.

18.—(1) In this Act the following expressions have the meanings hereby respectively assigned to them :—

" Class," in relation to coal, means a class determined according to the nature of the coal or of the trade, industry or other category of consumer supplied, or according to whether it be supplied for use in Great Britain or for export to any other country :

" Coal " includes bituminous coal, cannel coal, and anthracite :

" Coal mine " means any mine or open working where the getting of coal (including for the purposes of Part IV of this Act, lignite or brown coal), is the principal object of the mining or quarrying operations :

" Disposal " in relation to a coal mine means the tonnage in saleable coal raised and weighed at the pit head at that

coal mine, after deducting all coal to be used for the purpose of working the mine and all coal to be supplied free or at reduced rates for the use of persons who are or have been employed in or about the mine and the dependants of persons who have been so employed, and in relation to a district means the aggregate tonnage in saleable coal raised and so weighed at all the coal mines in the district after making the deductions aforesaid :

" District " means for the purposes of Part I of this Act a district mentioned in Part I of the Schedule to this Act, subject to any amalgamation or adjustment of districts under Part II of that Schedule; and for the purposes of Parts II and IV of this Act has the same meaning as it has for the purpose of the arrangements for the time being in force for the regulation of wages in the coal mining industry :

" Functions " includes powers and duties :

" Output " in relation to a coal mine means the tonnage in coal raised and weighed at the pit head at that coal mine, and in relation to Great Britain or a district means the aggregate tonnage in coal raised and so weighed at all the coal mines in Great Britain or the district, as the case may be :

" Owner " has the same meaning as in the Coal Mines Act, 1911. 1 & 2 Geo. 5, c. 50.

(2) The references in this Act to the London Gazette shall, in so far as any scheme or order relates to Scotland, be construed as references to the Edinburgh Gazette.

19.—(1) This Act may be cited as the Coal Mines Act, 1930, and the Coal Mines Acts, 1887 to 1926, and this Act may be cited together as the Coal Mines Acts, 1887 to 1930. Short title, citation and extent.

(2) This Act shall not extend to Northern Ireland.

SCHEDULE.

Section 18.

PART I.

DISTRICTS FOR PURPOSES OF PART I OF ACT.

Northumberland.
Durham.
Cumberland.
Lancashire and Cheshire.
Yorkshire.
Derbyshire (exclusive of South Derbyshire).
South Derbyshire.
Nottinghamshire.

Leicestershire.
Shropshire.
North Staffordshire.
South Staffordshire (exclusive of Cannock Chase) and Worcestershire.
Cannock Chase.
Warwickshire.
Forest of Dean.
Bristol.
Somerset.
Kent.
North Wales.
South Wales (including Monmouthshire).
Scotland.

PART II.

PROVISIONS AS TO AMALGAMATION AND ADJUSTMENT OF DISTRICTS.

1. If an application is made to the Board of Trade for the amalgamation of two or more districts, and the Board are satisfied that the application has been duly approved in accordance with paragraph 3 of this Part of this Schedule, the Board may by order direct that those districts be treated as one district.

2. If an application is made to the Board of Trade by the owner of a mine situate in any district that the mine should be treated as if it were situate in any other adjoining district, and the Board are satisfied that the application has been duly approved in accordance with the next following paragraph and that the mine has, for the purpose of the arrangements in force for the regulation of wages in the coal mining industry, been customarily treated as a mine situate in that other district, the Board may by order direct that that mine shall be treated as situate in that other district.

3. An application shall not be deemed to have been duly approved for the purposes of this Part of this Schedule unless it has been approved as respects every district to which the application relates by the owners of coal mines which produced more than half the output of those districts respectively, during the period of six months ending on the thirtieth day of June or the thirty-first day of December last preceding the date of the application, whichever day is the later:

Provided that if in the case of an application made before the first day of January, nineteen hundred and thirty-one, it appears to the Board of Trade that during such period of six months as aforesaid the output of a substantial number of coal mines in any district was subject to regulation under any arrangements made by a voluntary association or otherwise, the Board may treat any application submitted to them which relates to that district as if the latest period of six months during which the output of those coal mines was not so regulated had been the period mentioned in the foregoing provisions of this paragraph.

4. If for the purpose of the arrangements for the time being in force for the regulation of wages in the coal mining industry any adjustments are made in the districts specified in Part I of this Schedule, the Board of Trade may, if they think fit, by order direct that corresponding adjustments shall be made for the purposes of Part 1 of this Act, and upon the making of any such order, Part I of this Schedule shall have effect subject to any modification specified in the order.

PRACTICE.

The Commission was established by the Regulation of Railways Act, 1878, and it was reconstituted by the Railway and Canal Traffic Act, 1888 (*a*), and officially styled "The Railway and Canal Commission." The Commission consists of two appointed and three *ex officio* Commissioners, and is a Court of record with an official seal and is judicially noticed.

The two appointed Commissioners may be appointed from time to time as vacancies occur.

The Commissioners devote the whole of their time to the performance of their duties, and may not accept or hold any office or employment inconsistent with the provisions of the Regulation of Railways Act, 1873 (*b*).

The Commissioners are appointed on the recommendation of the Secretary of State for the Home Department (*c*).

The *ex officio* Commissioners are Judges of a superior Court and are appointed with their consent (a) in England by the Lord Chancellor, and (b) in Scotland by the Lord President of the Court of Session.

Under the Mines (Working Facilities and Support) Act, 1923 (*d*), important provisions were made for overcoming difficulties in connection with the working of mines in England, Wales and Scotland and under the Mining Industry Act, 1926 (*e*) the powers of the Commission were enlarged. The Commission have endeavoured in the "national interest" to administer these Acts expeditiously and cheaply, and with due regard to the rights of surface and other owners who might be injuriously affected by the granting of the rights applied for.

The procedure differs considerably from the general practice of the Commission, and it is hoped that the following decisions already determined, together with the general practice applicable, will be some guidance to parties interested in these applications.

The present Railway and Canal Commission Court is as follows:

Ex officio Commissioners.

In England: The Hon. Mr. Justice MacKinnon.
In Scotland: The Hon. Lord Blackburn.

Appointed Commissioners.

The Hon. Sir Francis Taylor, G.B.E., K.C.
Sir Francis Dunnell, Bart., K.C.B.

Offices of the Commission.

The central office of the Commission is open daily from 10 o'clock in the morning until 4 o'clock in the afternoon, except on Saturday, when it is open from 10 o'clock in the morning until 1 o'clock in the afternoon, and except between August 1 and October 12, when the office is open from 11 o'clock in the morning until 1 o'clock in the afternoon except on Saturdays.

The office is closed on the following days, namely, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Christmas Day and the three following days, and the day appointed to be kept as the King's Birthday, and Whit Monday and Whit Tuesday, and the first Monday in August (*f*).

(*a*) 51 & 52 Vict. c. 25, s. 2.
(*b*) 36 & 37 Vict. c. 48, s. 5.
(*c*) 51 & 52 Vict. c. 25, s. 3, sub-s. 2.
(*d*) 13 & 14 Geo. 5, c. 20.
(*e*) 16 & 17 Geo. 5, c. 28.
(*f*) Rule 77.

Parties.

Applicants under the Mines (Working Facilities and Support) Act, 1923, were limited to colliery companies or other persons, having an interest in the minerals or adjacent minerals, who wished to extend their workings and unable to do so by private arrangement.

Under the Mining Industry Act, 1926, the powers of the Commission were enlarged and any person may be granted the right to search for or work coal provided it was in the national interest. Amalgamation and absorption schemes may be submitted under Part I of this Act.

Parties may appear before the Commission in person or by counsel or solicitor.

Board of Trade Procedure.

An application under the Mines (Working Facilities and Support) Act, 1923, and/or under the Mining Industry Act, 1926, is, in the first instance, sent to the Mines Department of the Board of Trade. An application under the Mines (Working Facilities and Support) Act, 1923, or under that Act and Part II of the Mining Industry Act, 1926, is considered by the Board of Trade, and unless, after communicating with such other parties interested (if any) as they think fit, they are of opinion that a *prima facie* case is not made out, they refer the matter to the Railway and Canal Commission (*g*), there is a proviso that where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition, or having unreasonably refused to grant it, or having demanded terms which are unreasonable, the Board shall not so refer the application to the Commission without first having communicated with that person.

Under Part I of the Mining Industry Act, 1926, amalgamation and absorption schemes may be submitted and the Board of Trade, if satisfied after communication with such parties interested as they may think fit that a *prima facie* case is made out that the proposed scheme would promote the more economical and efficient working, treating, or disposing of coal, refer the matter to the Railway and Canal Commission (*h*).

Jurisdiction.

Where an application is referred to the Commission, the Commission must be satisfied that it is expedient, in the national interest, that the right applied for should be granted (*i*).

The Commission may determine, where separate applications are made by two or more persons for the right to work the same minerals, which (if any) of the applicants is to be preferred, or whether both applicants should be allowed to work a part.

The Commission may restrict the working of minerals required for support (*k*), and they have power to review and rescind or vary any order made by them (*l*).

Where a scheme under Part I of the Mining Industry Act, 1926, is referred to the Commission, the Commission may confirm the Scheme either without modifications or subject to such modifications as it may think fit, or may refuse to confirm the scheme (*m*).

The central office of the Commission is at the Royal Courts of Justice, London, England.

Applications from England and Wales are heard at the Railway and Canal Commission Court, Royal Courts of Justice, London, England, and applications from Scotland are heard at Parliament House, Edinburgh, Scotland.

(*g*) 13 & 14 Geo. 5, c. 20, s. 5, sub-s. 4.
(*h*) 16 & 17 Geo. 5, c. 28, s. 6.
(*i*) 13 & 14 Geo. 5, c. 20, s. 6, sub-s. 1.
(*k*) 13 & 14 Geo. 5, c. 20, s. 8, sub-s. 1.
(*l*) 51 & 52 Vict. c. 25, s. 18, sub-s. 2.
(*m*) 16 & 17 Geo. 5, c. 28, s. 7, sub-s. 2.

Local inquiries may be held by any one of the members of the Commission or by an officer of the Commission, whom they may direct to hold the same (*n*).

There is a provision for the additional appointment of a Judge when any Judge assigned is temporarily unable to attend (*o*).

The Commission may from time to time adjourn any proceedings before them (*p*).

Annual Report to Parliament.

The Commissioners are required once in every year to make a report to His Majesty of their proceedings during the past year (*q*). The report is laid before the King and both Houses of Parliament, and copies issued to the members of Parliament before publication.

Reference to Commission.

Upon a reference to the Commission the application and all necessary papers, documents, plans and material deposited by the applicant with the Board of Trade are lodged with the Commission (*r*).

Rule 28 provides that notice be given by the Board of Trade to the applicant of the lodging of such reference with the Commission within three days after the reference has been lodged (*r*).

Sittings.

In England.—The Michaelmas sittings shall commence on October 12 and terminate on December 21, the Hilary sittings shall commence on January 11 and terminate on the Wednesday before Easter, the Easter sittings shall commence on the Friday after Easter week and terminate on the Friday before Whit Sunday, and the Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on July 31 (*s*).

In Scotland.—Shall commence on October 15 and terminate on March 20, and commence on May 12 and terminate on July 20.

Urgent Applications.

The Commission will sit within forty-eight hours (*t*).

Application.

The application should state fully what rights the applicant wishes to acquire and the sections of the Acts under which he is applying.

Where the right to work is applied for the application should state the applicant's interest (if any) in the minerals in question or adjacent minerals. It should also give the fullest particulars possible as to (1) the ownership of the minerals, and the surface under which he desires to work; (2) the nature of the buildings or works (if any) on the surface; (3) the adjoining owners of minerals and properties; (4) the proposed method of working; and (5) grounds of national interest.

Under the Mines (Working Facilities and Support) Act, 1923 :—

Section 1, the application is for the right to work minerals which would otherwise be left permanently unworked.

Section 2, the application is for a right to work minerals where adjustment of boundaries between two companies has been agreed upon with a view to reducing the amount of minerals to be left unworked or enabling the minerals to be more efficiently or more economically worked and the effect of the agreement cannot be given.

(*n*) 13 & 14 Geo. 5, c. 20, s. 10, sub-s. 6.
(*o*) 51 & 52 Vict. c. 20, s. 5, sub-s. 1.
(*p*) Rule 80.
(*q*) 36 & 37 Vict. c. 48, s. 31.
(*r*) Rule 28 (1).
(*s*) Rule 78.
(*t*) Calstock Urban District Council.

Section 3, the application is for a grant of ancillary rights for facilitating the working of the minerals where the company is unable to obtain such right.

Section 8, the application is for the restriction on the working of minerals required for the support of any buildings or works.

Under the Mining Industry Act, 1926 :—

Sections 1 to 4, the application is for confirmation of amalgamation and absorption schemes.

Section 13, sub-section 1, the application is for the right to search for or work coal and may be made by any person.

Section 13, sub-section 2, the application is for the right to work coal freed from any impeding restrictions, terms or conditions, binding upon the person entitled to work the coal.

Applications are filed with the necessary papers, plans and other material at the Registrar's office. Three copies thereof are lodged for the use of the Commission, and with applications from Scotland an additional copy for the use of the chief clerk to the *ex officio* Commissioner for Scotland, with whom documents relating to the application or interlocutory applications may be lodged. A list of all applications pending before the Commission is open to inspection at the Registry in London.

An affidavit in support of the application is required in every case and must be filed before the hearing of the summons for directions.

Applications under the liberty to apply to vary, rescind or alter an order must be made to the Commission and supported by an affidavit (*u*).

Scotland.

In applications from Scotland special attention is called to Rule 86, which gives power to the *ex officio* Commissioner to determine questions relating to practice and procedure.

Affidavits.

The affidavit in support of an application must be filed three days before the hearing of the summons for directions and three copies thereof lodged for the use of the Commission. Great care should be taken in preparing the affidavit as the Commissioners consider the application and affidavit before the hearing and pay great attention to these documents.

Affidavits used in any proceeding before the Commission may be sworn as follows :—

In the United Kingdom, before any of the Commissioners or the Registrar, or officer appointed by the Commission to administer oaths in proceedings before them (without payment of any fee) or before a person authorised to administer oaths in any of the superior Courts or before a commissioner for oaths or a justice of the peace.

In Scotland, in addition to the above-mentioned persons, before any sheriff-depute or his substitute.

In any place in the British Dominions not in Great Britain, before any Court, Judge, or justice of the peace, or any other person authorised to administer the oaths there in any Court.

In any place out of the British Dominions before a British Minister, Consul or Vice-Consul.

The Commission take judicial notice of the seal or signature, as the case may be, attached, appended or subscribed to any such affidavit (*x*).

The witnesses at the hearing are examined *viva voce*, but the Commission may at any time, whether before or at the hearing, order that any particular facts be proved by affidavit.

Depositions taken before a person authorised to take them may be read at the hearing without the attendance of the deponents unless otherwise ordered (*y*).

(*u*) Brown Bayley. (*x*) Rule 72. (*y*) Rule 61.

Ordnance Plans.

Four copies of the ordnance plan showing the surface affected must be lodged before the hearing.

Amendment.

Application may be made at any stage of the proceedings for the amendment of pleadings, the Commission having determined that it would not be hampered by technical objections (*z*).

A copy of an amended application must be served upon the Board of Trade.

Summons for Directions.

Within ten days of the date of the notice by the Mines Department of the Board of Trade that a reference has been lodged with the Commission a summons for directions must be taken out (for form of summons see Appendix III, p. 168). In England the summons is heard by the appointed Commissioners in chambers and in Scotland before the *ex officio* Commission. Directions are given as to advertisement, service and publication of the application; the convening of meetings in amalgamation and absorption schemes and dates fixed for lodging objections and replies thereto.

The proposed minutes of order is submitted to the Court at the hearing of the summons for directions and the precedent upon which such orders are based will be found in Appendices IV and V, pp. 169—171.

Advertisement.

All advertisements must give the best and fullest particulars, and the form of advertisement must be approved and initialled by the Registrar before publication, and should in all cases, where the applicant is willing to make compensation for disturbance, state such willingness to do so.

An affidavit as to the service of application, posting of notices and insertion of advertisements in newspapers unless directed to be filed by the order made on the summons for directions is not required. A letter as to this will be sufficient provided copies of the notices and newspapers containing such advertisements are forwarded to the Registrar.

The Registrar issues a certificate when he is satisfied that this part of the order, made on the summons for directions, has been complied with.

A form of the advertisement and notice will be found in Appendix VI, p. 171.

Documents.

Applications are filed with the necessary papers, plans and other material at the Registrar's office. Three copies thereof are lodged for the use of the Commission, and with applications from Scotland an additional copy for the use of the chief clerk to the *ex-officio* Commissioner for Scotland, with whom documents relating to the application or interlocutory applications may be lodged.

Service of Application.

The application should be served with a copy of the order made on the summons for directions.

Objections.

An objection to an application must contain a clear and concise statement of the grounds thereof and must be filed with the Registrar within the time stipulated by the order made on the summons for directions, but application may be made for an extension of time, although the application for the same is not made until after the expiration of the time appointed (*a*).

Three copies of the objections are also filed at the Registrar's office and a signed copy must be served by the objectors upon the applicant or his solicitor.

(*z*) Rule 82. (*a*) Rule 83.

Objections should be headed " The Objections of ."

The objections are considered by the Commissioners in chambers and an order, embodying the decision as to the parties to whom leave has been given to appear at the hearing, is issued.

Notice is given to the applicant and to the objectors as to the decision of the Commissioners and the objectors given leave to appear are notified as to the date fixed for the hearing.

Discontinuance.

Applicants may only withdraw an application with the leave of the Commission. The mere fact that an applicant had entered into an agreement is not sufficient for the Commission to give its consent. The Commission must be satisfied apart from the interest of the parties that the agreement is in the national interest (*b*).

Reply.

The time within which the applicant may reply to an objection is usually fixed by the order made on the summons for directions, but if not so fixed rule 41 applies and the delivery must be made within six days.

Copies.

Copies and office copies of all documents filed in the Registry may be obtained.

Default in Filing Pleadings.

If the applicant does not deliver a reply to the objection within the period allowed, the pleadings shall be deemed to be closed at the expiration of that period (*c*), but application may be made to the Registrar by summmons, for enlargement of time, notwithstanding the expiration of the time appointed (*d*).

Delay in Proceedings.

Where there is undue delay in making an application for hearing, the Commission may issue a summons, returnable in six days, requiring the parties to explain the causes of the delay, and upon such summons an order may be made to expedite the proceedings or to enter final judgment (*e*).

Inspection of Documents.

The Commission may at any time during the pendency of an application order the production by any party of the documents in his possession, and either party may, at any time before or at the hearing, apply for inspection of any document referred to in the application, objection, or reply (*f*).

Either party may apply for the production of such documents which are in the possession or control of the other party (*g*), and either party may admit any documents saving all just exceptions (*h*).

The Commission may make the party neglecting or refusing to admit after notice pay the costs of proving such documents, whatever the result of the application may be.

Supreme Court Rules.

In cases not expressly provided for, the general principles and practice in the High Court in England or the Court of Session in Scotland may be adopted or applied at the discretion of the Commissioners to any proceedings before them (*i*).

(*b*) *Ingham's Thornhill Collieries.*
(*c*) Rule 43.
(*d*) Rule 83.
(*e*) Rule 88.
(*f*) Rules 51 and 52.
(*g*) Rule 53.
(*h*) Rule 54.
(*i*) Rule 6.

Lists of Documents.

Copies of the lists of documents ordered to be exchanged are to be filed with the Registrar on or before the day appointed.

Correspondence.

Four copies of the correspondence to be referred to at the hearing is furnished four days before the hearing.

Interlocutory Applications.

The hearing of an interlocutory application is in chambers. The application is made by summons duly served and may be determined in a summary way.

All interlocutory applications, in England, are heard by the Registrar upon summons, and may, if the Registrar thinks fit, either before or at the hearing thereof, adjourn the application into Court for hearing before the Commissioners.

Interlocutory applications from Scotland may be referred by the Registrar to the *ex officio* Commissioner for Scotland, or may be made direct to the *ex officio* Commissioner for Scotland.

Any person affected by the decision of the Registrar may appeal therefrom. Involving a question of law the appeal would lie to the *ex officio* Commissioner and in any other matters to the Commissioners.

The appeal is made by way of endorsement on the summons, by the Registrar, upon the application of any party, and it is not necessary to issue a fresh summons. Four days' notice must be given to the other side.

Where an appeal is made to the *ex officio* Commissioner, it is the *ex officio* Commissioner for the country in which the applicant is desirous of obtaining the rights asked for in his application to whom the appeal lies.

An appeal from the Registrar's decision is no stay of proceedings unless otherwise ordered by the Registrar, by the *ex officio* Commissioner, or by the Commissioners.

During the vacations only urgent interlocutory applications are heard.

Enlargement or Abridgment of Time.

Application for the enlargement or abridgment of time appointed by the Rules of the Commission or fixed by an order, may be made by summons before the Registrar.

The time fixed by the Rules for the filing of any pleadings may be enlarged by consent without application to the Commissioners, but *not* when such time is fixed by an order.

Computation of Time.

The number of days is reckoned exclusively of the first day and inclusively of the last day unless the last day shall happen to fall on a Sunday, Christmas Day or Good Friday or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day (*k*).

The following days are not reckoned or included in any proceedings or orders before the Commission (*l*) :—

Between Thursday next before and the Wednesday next after Easter day.
King's Birthday.
Whit Monday.
Whit Tuesday.
Christmas Day and the three following days.
First Monday in August.

Change of Solicitor.

Notice of change of solicitor is filed with the Registrar, and the practice of the High Court is followed in regard to the service of such notice.

(*k*) Rule 74. (*l*) Rule 75.

Cause List.

The cases set down for hearing in England are inserted in the Daily Cause List of the Supreme Court of Judicature.

Hearing.

The Commissioners sit in England and Scotland and the place of hearing is determined by the Commissioners; the presiding Judge is the *ex officio* Commissioner for the country in which the Court sits.

If the applicant does not appear at the time and place appointed for the hearing the Commissioners may dismiss the application, and if any objector, having been given leave to attend, does not appear at such time and place, they may hear and determine the application in his absence (*m*).

The hearing, when once commenced, shall proceed, so far as in the judgment of the Commissioners may be practicable and convenient, from day to day (*n*).

The Commissioners may from time to time adjourn any proceedings before them (*o*).

Shorthand note.

It is the practice of the parties to arrange between them to have a shorthand note taken of the evidence and the judgment, and to furnish the Court with four copies of the transcript.

Law.

Points of law raised in proceedings are heard before the Commission on the hearing of the application.

Assessors and Local Inquiries.

There are provisions in the Mines (Working Facilities and Support) Act, 1923 (*p*), that (1) in any case in which the Commission think it is expedient they may call in the aid of one or more assessors; and (2) they may make inquiries locally.

At the hearing of the applications of Henry Briggs and Charlesworth, Sir Thomas Mottram assisted the Commission.

The Commission have not yet found it expedient to hold a local inquiry.

Attendance of Witnesses.

The attendance of witnesses with or without documents may be enforced by subpœna and they are entitled to the same protection as when subpœnaed or cited to attend the High Court of Justice, and the laws and practice in force for the time being is applicable to them in proceedings before the Commission (*q*).

Subpœnas.

Where the name of a witness cannot be given at the time of issue the practice of the High Court is adopted. The subpœna may be issued without the name of the witness being inserted therein, and a note made in the margin of the writ limiting the number of witnesses according to the fees paid. When the names have been inserted no other names can be substituted (*r*).

Financial Stability.

The financial stability of an applicant is considered by the Commission. The last balance sheet of the applicants, where the applicants are a

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(*m*) Rule 60.
(*n*) Rule 63.
(*o*) Rule 80.
(*p*) 13 & 14 Geo. 5, c. 20, s. 10, sub-s. 1.
(*q*) Rule 57.
(*r*) *Re Taylor*, [1912] A. C. 247.

limited company, should be put in as evidence of financial stability. In other cases similar evidence of financial stability is required.

The balance sheet alone may not be considered sufficient proof of financial stability (*s*).

Judgment.

The Commissioners may give their decision at once or reserve it (*t*). They may give their decision in writing signed by them, and it may be sent or delivered to the respective parties, and it is not necessary to hold a Court merely for the purpose of giving such decision (*u*).

Final Orders.

Minutes of final orders in accordance with the judgment of the Commissioners are lodged. The basis for building up final orders will be found in the analysis of the orders made by the Commission (Appendices VII and VIII, pp. 172—197).

The Commission fixes a day for the consideration of the minutes of order, usually giving the parties seven or ten days for the preparation thereof. Four copies of the minutes of order must be lodged before the day fixed.

The plans and other documents attached to the final order are initialled by the Registrar for the purposes of identification.

Differences.

All differences arising under an order of the Commission must be referred to the Commission.

Consent.

Parties may, by consent or in writing, dispense with formal proceedings or some portion of them, and the order, by consent, if approved of by the Commissioners, may be sealed and issued.

Assignment.

Applicants must not assign nor underlet or part with the rights granted to them without the sanction of the Commission.

Compensation or Consideration.

Under S. R. & O. 1926, No. 910, provision has been made for the payment into Court of the amount of the compensation or consideration and to facilitate the payment out of Court to the persons entitled thereto. A claimant may submit his title to the solicitor for the colliery company, and the solicitor, if satisfied, may forward his certificate to the Registrar of the Commission for approval. When the Registrar has approved the certificate, an order is made directing payment out of Court of the amounts due to the persons so certified.

One-half of the expenses allowed by the Registrar in the investigation of title is borne by the colliery company, and one-half deducted from the amount due by way of royalty.

Where a person to whom any compensation or consideration is payable cannot be found or ascertained, the amount due is paid into the Court of the Railway and Canal Commission.

For the investment of moneys in Court application may be made to the Registrar, who will give directions as to the nature of investment.

Payments into Court and out of Court.

(See Compensation or Consideration.)

Costs.

The discretion of the Commission with regard to costs is unfettered and not limited in the manner provided by section 2 of the Railway and Canal Traffic Act, 1894 (*x*).

(*s*) *Charlesworth and Briggs.*
(*t*) Rule 65.
(*u*) Rule 66.
(*x*) 57 & 58 Vict. c. 54.

The Commission have in recent cases followed the practice under the Parliamentary Costs Act, 1865 (*y*), and not allowed costs, but they will consider the question where a party has been unreasonable, oppressive or vexatious.

The Court has not laid down any hard and fast rule, but if any party has been unreasonable, either in bringing his case forward or in the method by which he brings his case forward, or if any party has been unreasonable in objecting or in the method by which he has objected to an application, the Court will then consider carefully whether such unreasonableness shall not be visited by such party having to pay costs (*z*).

The Commission have allowed costs in the following cases :—

1. *Mynachdy Colliery Co.* (1903), *Ltd.*
   Applicants to pay costs both of the hearing of the application and of the preparation of the cause for hearing—Bamber's Mines Cases, Vol. I, p. 163.
2. *New Hucknall Colliery Co.*
   Objectors to pay costs—41 T. L. R. p. 383.
3. *Llwynffynon Colliery Co., Ltd.*
   Hendregarreg Colliery Co., Ltd. (Objectors) to pay certain costs—not reported.
4. *Tilmanstone (Kent) Collieries, Ltd.*
   Applicants to pay to the Objectors certain costs—43 T. L. R. p. 349; Railway and Canal Traffic Cases, Vol. 19, p. 26.
5. *Brown Bayleys Steel Works and others* v. *The Nunnery Colliery Co.*
   Applicants to pay three-quarters of the costs incurred by the Nunnery Colliery Co.—not reported.
6. *The Ocean Coal Co., Ltd.* v. *Fothergill.*
   Objectors to pay costs—Times Law Reports, 1930.

Taxation of Costs.

Costs may be taxed by the Registrar or such other person as the Commission may direct (*a*), or by a Taxing Master of the Supreme Court in case the parties differ.

Fees.

The fees payable for the hearing of the summons for directions is the same as for a hearing in chambers and the fee payable for filing an objection the same as for filing an answer. The fee payable for the certificate issued by the Registrar as to the service of the application, posting of notices and insertion of advertisements in newspapers is 5s.

Upon notice from the Board of Trade that an application had been referred to the Commission the fee due for the filing thereof should be paid.

Fees on interlocutory applications must be paid before the order is sealed and issued.

All fees are payable by impressed stamps on official forms.

Appeals.

Appeals from the Registrar upon a question of law lie to the *ex officio* Commissioners and upon other matters to the Commissioners.

Appeals from the Commissions on questions of law lie to the Court of Appeal. There is no appeal from the Commissioners on questions of fact or upon any question regarding the *locus standi* of a complainant (*b*).

In Scotland the appeals from the judgment, order or finding of the Commissioners are covered by the rules made by the Act of Sederunt, 1913, which are set out in the Railway and Canal Commissions.

(*y*) 28 & 29 Vict. c. 27, ss. 1 and 2.

(*z*) *Re Nunnery Colliery Co., Ltd.*, [1924] W. N. p. 255; 69 S. J. p. 52; Bamber's Mining Cases, Vol. I, p. 1.

(*a*) Rule 68.

(*b*) 51 & 52 Vict. c. 25, s. 17.

APPENDIX I.

Statutory Rules and Orders, 1924, *No.* 1,400.

RAILWAY.

Railway and Canal Commission.

The Railway and Canal Commission Rules, 1924.

Dated December 12, 1924 (*a*).

We, the Railway and Canal Commissioners, with the approval of the Lord Chancellor and the Secretary of State for the Home Department, do by virtue of The Railway and Canal Traffic Act, 1888 (*b*), and all other powers enabling us in this behalf, hereby make the following Rules :—

1.—(1) These Rules may be cited as the Railway and Canal Commission Rules, 1924.

They shall apply to all proceedings in the Court of the Railway and Canal Commission, including all proceedings pending on that day. When no other provision is made by these Rules, the former procedure and practice shall continue to be used.

(2) The following Rules made by the Commissioners shall be annulled :—

The General Rules dated the 22nd day of February, 1889 (S. R. and O., Rev., 1904, Vol. II, Railway, p. 43).

The Rules dated the 30th day of April, 1902 (S. R. and O. 1902, No. 354).

The Rules dated the 24th day of January, 1905 (S. R. and O. 1905, No. 76).

The Rules dated the 1st day of January, 1909 (S. R. and O. 1909, No. 484).

The Rules dated the 15th day of January, 1918 (S. R. and O. 1918, No. 61).

(3) The Railway and Canal Commission (Mines Working Facilities) Provisional Rules, 1923, which came into operation on the 1st day of January, 1924, are replaced by Rule 28 of these Rules.

Interpretation of terms.

2. *Interpretation of Terms.*—In the construction of these Rules and Forms the word "Commission" shall mean the Court of the Railway and Canal Commission established under the Statute "For the better Regulation of Railways and Canals and for other purposes." Words importing the singular number shall include the plural number and words importing the plural number shall include the singular number, and the following terms shall (if not inconsistent with the context or subject-matter) have the respective meanings hereinafter assigned to them; that is to say, "application" shall include complaint under any of the Statutes mentioned in the first part of this volume and hereinafter referred to as the said Statutes; "applicant" shall include all persons or authorities authorised to make any application or complaint to the Commission; "defendant" shall mean the persons or company against whom the application or complaint is made, or any persons or authorities who may appear in opposition to such application or complaint; "solicitor" shall include any person entitled under section 51 of the Railway and Canal Traffic Act, 1888, to practise as an attorney or agent in proceedings before the Court; and terms defined by the said Act shall, unless there be something repugnant thereto in the context, have in these Rules, the same meanings that are assigned to them by these Acts. "Superior Court" shall mean the High Court of Justice in England, the Court of Session in Scotland, and the High Court of Justice in Northern Ireland.

Constitution.

(3) The Commission, although it sits in England, Scotland and Northern Ireland, is all one Commission. It consists of three *ex officio* members. The

(*a*) These Regulations supersede the Railway and Canal Commission Provisional Rules, 1924, which were made on August 25, 1924, and came into force on September 12, 1924.

(*b*) 51 & 52 Vict. c. 25.

Judge of the High Court in England nominated by the Lord Chancellor, the Judge of the Court of Session in Scotland, nominated by the Lord President for Scotland, and the Lord Chief Justice of Northern Ireland, nominated by the Secretary of State, and two Railway Commissioners appointed under the provisions of the Railway and Canal Traffic Acts, 1888.

Crown.

4. In any case in which the application seeks for any remedy against the Crown or against any Government Department, the Court may by Order direct that the Attorney-General in England, or the Lord Advocate in Scotland, or the Attorney-General in Northern Ireland, shall be a defendant.

Venue.

5. Where, in any complaint or other proceeding before the Commissioners, the defendant has his domicile or principal place of business or head office in England, such proceedings shall be deemed to be proceedings falling to be dealt with by the *ex-officio* Commissioner for England, in so far as he is, by Statute or any Rule of Court, charged with any duty in connection therewith, and in like manner where the defendant has his domicile or principal place of business or head office in Scotland or Northern Ireland the proceedings shall be dealt with by the *ex officio* Commissioners for Scotland and Northern Ireland respectively; where the question in dispute relates to any property or railway situated in a different part of the United Kingdom from that in which the defendant has his domicile or principal place of business or head office, the Commissioners, if they are of opinion that the trial can be more conveniently and economically heard in such different part of the United Kingdom, may order the trial to take place there. Where there are in any proceedings more defendants than one having their domicile or principal place of business or head office in different parts of the United Kingdom, the Commissioners shall determine before which of the *ex officio* Commissioners such proceedings shall depend.

Subject to this rule, if any question should arise whether the Superior Court of England, Northern Ireland, or Scotland is the Court with reference to which in the particular case the expression "superior court" in any of the said rules is to be understood, the same shall be determined by the Commissioners, who shall make such order in that behalf as they shall think right under the circumstances either with reference to the particular matter under consideration only or with reference to the future conduct of the proceedings in general, or any of them, or with reference to anything that has already been done.

Provided that if any steps or proceedings have been taken under the practice of one superior court, and the Commissioners shall think that the practice of any other superior court ought to be applied, they shall make such order as shall, as far as practicable and as is just under the circumstances, prevent the step already taken from being rendered nugatory, and any expense already incurred from being thrown away.

Discretion of Commissioners in cases not expressly provided for.

6. The general principles of practice in the High Court in England or the Court of Session in Scotland, or the High Court of Northern Ireland may be adopted or applied at the discretion of the Commissioners to any proceedings before them.

Application or Complaint to the Commissioners.

Publication of rates, classification of merchandise, etc.

7. Every proceeding before the Commissioners, except proceedings under section 14 of the Regulation of Railways Act, 1873 (*c*), and sections 33 and 34 of the Railway and Canal Traffic Act, 1888, and applications under rules 69 and 70 of these rules, shall be commenced by an application made to them, which shall be in writing, or printed, and signed by the applicant or his solicitor, or in the case of a company or any of the authorities mentioned in section 7 of the Railway and Canal Traffic Act, 1888, being applicants, the application shall be signed by their chairman, manager, secretary, or solicitor. It shall contain a clear and concise statement of the facts, the grounds of application, and the relief or remedy to which the applicant claims to be entitled. It shall be divided into paragraphs numbered consecutively. It shall be indorsed with the name and address of the applicant, and if there be a solicitor acting for him in the matter, with the name and address of such solicitor, and if he be an agent for another solicitor in the matter, then also the name and address of such other solicitor. The application shall be according to Form No. 1 in the First Schedule hereto, or to the like effect.

Reasonable facilities for rtceiving and forwarding of traffic, undue

8. Every application made to the Commissioners under section 6 of the Regulation of Railways Act, 1873, or section 9 of the Railway and Canal

(*c*) 36 & 37 Vict. c. 48.

Traffic Act, 1888, or section 16, sub-section 4 of the Railways Act, 1921 (*d*), or section 77, sub-section 3, of the Railways Act, 1921, shall be for an order enjoining the company complained of to do or to desist from doing the acts therein specified. preference, etc.

9. Every application made to the Commissioners under section 8 of the Regulation of Railways Act, 1873, shall be for an order determining the difference referred to them (with their consent) in lieu of being referred to arbitration, such consent to be signified by sealing the indorsement on such application; which indorsement shall be according to Form No. 3 in the First Schedule hereto. The applicant shall state whether or not it is a case in which any arbitrator has in any general or special Act been designated by his name or by the name of his office, or in which a standing arbitrator has been appointed under any general or special Act. Differences between Railway or Canal Companies to be referred to the Commission in lieu of arbitration.

10. Every application made to the Commissioners under section 9 of the Regulation of Railways Act, 1873, shall be signed by all the parties to the difference, or their solicitors, and shall be for an order determining the difference referred to the Commissioners (with their consent). The consent of the Commissioners shall be signified as aforesaid. Differences to be determined with the assent of the Commissioners.

11. Every application made to the Commissioners under section 10, sub-section 1, of the Regulation of Railways Act, 1873, shall be for the approval by the Commissioners of any working agreement between railway companies whereof they desire to have the Commissioners' approval, or shall be for the exercise of any other powers (to be specified in the said application) transferred by the said sub-section to the Commissioners with respect to the approval of working agreements (*e*). Working agreements.

12. Every application made to the Commissioners under section 25, sub-section 4, of the Railway and Canal Traffic Act, 1888, shall be for an order allowing the through rate or route, or through rate and route proposed by the applicant and objected to by the forwarding company or companies. Through rate or route.

13. Every application made by the Commissioners under section 25, sub-sections 6 and 7, of the Railway and Canal Traffic Act, 1888, shall be for an order allowing or determining (as the case may be) the apportionment of the through rate objected to by the forwarding company or companies. Apportionment of through rate.

14. Every application made to the Commissioners under section 14 of the Regulation of Railways Act, 1873, and under the Railway and Canal Traffic Act, 1888, and amended by the Railways Act, 1921, may be by summons, and shall be for an order upon the company against whom the application is made to keep at the stations, wharves, or ports named in such summons a book or books of rates and distances, and other particulars required by those sections or either of them, or for an order allowing inspection of such books, or for an order to distinguish in the book or books in such summons mentioned how much of the rate in respect whereof the application is made is for the conveyance of the particular description of traffic therein named on the railway or canal in question, including therein tolls for the use of the railway or canal, for use of carriages or vessels or for locomotive or other tractive power, and how much is for other expenses, specifying the nature and detail of such other expenses. The applicant in such last-mentioned case shall file an affidavit at the time of taking out such summons stating that he is interested in the matter, and showing how he is interested therein. Publication of rates.

15. Every application made to the Commissioners under section 15 of the Regulation of Railways Act, 1873, or under section 37 of the Railway and Canal Traffic Act, 1888, and amended by the Railways Act, 1921, shall be for them to hear and determine the question or dispute therein mentioned with respect to the terminal charges of the company against whom the application is made, and to decide what is a reasonable sum to be paid to such company in respect of such terminal charges. Terminal charges.

16. Every application made to the Commissioners under section 16 of the Regulation of Railways Act, 1873, shall be for them to sanction the agreement therein mentioned, such sanction to be signified by certificate under their seal. Before the companies enter into such agreement, notice of their intention to do so shall be given by them, or one of them, by advertisement to be inserted once at least in each of three successive weeks in some newspaper Agreements between railway companies and canal companies.

(*d*) 11 & 12 Geo. 5, c. 55.

(*e*) The public notice required to be given by the railway companies should be according to Form No. 9 in the First Schedule hereto, and the Commissioners' directions prescribing the steps to be taken to obtain their approval of working agreements are set out in the Third Schedule.

published or circulating in the county or counties in which the canal to which the proposed agreement relates or some portion of such canal is situate. Such notice shall be according to Form No. 8 in the First Schedule hereto.

Canals out of repair.

17. Every application made to the Commissioners under section 17 of the Regulation of Railways Act, 1873, shall be for an order upon the railway company against whom the application is made, restraining them from permitting and suffering the canal therein mentioned, or parts thereof, or works belonging thereto, to remain unrepaired, or in want of dredging, or not in good working condition, or without proper supplies of water thereto; and also enjoining them to keep and maintain the said canal or such parts thereof, or such works thereto belonging, thoroughly repaired or dredged or in good working condition, or to preserve the supply of water to the same. The application in such case shall specify the obstruction, want of repair, or other defect sought to be remedied, and show in what part of the canal or works such obstruction, want of repair, or other defect exists.

Tolls, rates and charges (Railways).

18. Every application made to the Commissioners under section 10 of the Railway and Canal Traffic Act, 1888, shall be for them to hear and determine the question or dispute therein mentioned with respect to the legality of any toll, rate, or charge or portion of a toll, rate, or charge charged or sought to be charged by any company for merchandise traffic. The parties may concur in stating such question or dispute in the form of a joint application without further pleadings.

Group rates.

19. Every application by a company under section 29, sub-section 3, of the Railway and Canal Traffic Act, 1888, shall be for an order determining whether the group rate, or the rate as to which there is a doubt, is or is not a contravention of section 2 of the Railway and Canal Traffic Act, 1854 (*f*), and in any such application the company applying shall state the nature of the doubt considered to exist.

Where such an application is in respect of a group rate it shall specify, in addition to the amount of the rate, the names of the places grouped together, and such distances as may be material for the purposes of the application.

The company making the application for such order shall give one month's public notice of their intention to apply to the Commissioners under this section by advertisement in at least one London daily newspaper and in one newspaper in general circulation in the district or districts within which the group is comprehended; such advertisements shall in each case be inserted in each of three successive weeks, at intervals of not less than a week, in each of the newspapers in which they appear. In such notice full particulars shall be given of the group rate, or the rate or rates as to which the Commissioners' determination is to be asked.

Tolls, rates and charges (Canals).

20. Every application to the Commissioners under section 38, sub-section 1, of the Railway and Canal Traffic Act, 1888, shall be for an order on the railway company or on the directors or officers of the railway company or on any person acting on their behalf, and having such control or right of interference as mentioned in the said section, requiring the tolls, rates, and charges levied by such railway company, directors, officers, or persons on the traffic of, or for the conveyance of merchandise on, the canal in respect of which the complaint is made to be altered and adjusted in such a manner that the same shall be reasonable as compared with the rates and charges for the conveyance of merchandise on the railway. The applicant shall state in what manner the existing tolls, rates, and charges so levied as aforesaid are calculated to divert traffic from the canal to the railway to the detriment of the canal, or of persons sending traffic over the canal or other canals adjacent to it, and shall state the amount and the particulars of the alteration or reduction proposed.

Enforcement of an Order made by the Minister of Transport.

(*g*) 21.—Every application under section 2 of the Regulation of Railways Act, 1889 (*h*), shall be for the enforcement of an Order made by the Minister of Transport under section 1 of that Act.

Metropolis Water Act, 1897.

22. These rules shall with the necessary modifications apply to all applications to the Commissioners under the Metropolis Water Act, 1897 (*i*).

Prevention of accidents.

(*g*) 23. When the Minister of Transport has referred to the Railway and Canal Commissioners an objection to any rule made under sections 3 and 10 of

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(*f*) 17 & 18 Vict. c. 31.

(*g*) Powers of Board of Trade transferred to Minister of Transport, 9 & 10 Geo. 5, c. 50, s. 2.

(*h*) 52 & 53 Vict. c. 57.

(*i*) 60 & 61 Vict. c. 56.

the Railway Employment (Prevention of Accidents) Act, 1900 (*k*), the Registrar shall give to the Minister of Transport, and to the person who has required the Minister of Transport to refer such objection, and to any persons who have obtained the consent of the Commissioners to be heard, not less than 21 days' notice in writing, of the date when such objection will be considered by the Commissioners.

Any persons (other than the Minister of Transport and the person who has required the Minister of Transport to refer such objection) desiring to be heard, either in support of or in opposition to an objection, shall give written notice to the Registrar of their desire to be heard, and such notice shall state the grounds on which they desire to be so heard. Such persons, after obtaining the consent of the Commissioners to be so heard, shall be entitled to obtain from the Registrar's Office copies of all objections lodged, on payment for the same.

The Registrar shall give to the Minister of Transport and to the person who has required the Minister of Transport to refer such objection notice, in writing, that such consent has been given by the Commissioners.

The Court for the consideration of an objection may be a Court as constituted for the purpose of the hearing of any case under the Railway and Canal Traffic Act, 1888, or a single Commissioner, or a Commissioner or Commissioners, with one or more assessors, as the Commissioners acting for the particular country to which the objection relates shall determine.

These rules so far as applicable, may be adopted and applied at the discretion of the Commissioners to the proceedings before them under this Act.

The Commissioners may award costs if they are of opinion that a requirement to refer an objection to the Commissioners is frivolous and vexatious.

Facilities with respect to private sidings.

24. No application under section 3 of the Railway (Private Siding) Act, 1904 (*l*), shall be filed without the consent of the Commissioners, and such consent shall be signified by sealing the indorsement on such application.

The applicant shall leave at the Commissioners' office a copy of the application proposed to be filed and served and shall also leave an affidavit verifying the statements in such application.

Defence of the Realm Acts.

25.—(1) The Rules shall (except in so far as they give or purport to give jurisdiction to one Commissioner sitting alone) apply with the necessary modifications to all applications and proceedings before the Railway and Canal Commission (hereinafter called the Commission) under the Defence of the Realm (Acquisition of Land) Acts, 1916 and 1920 (*m*).

(2) Unless otherwise ordered by the Commission an application to the Commission :—

(a) under any of the following sections of the Defence of the Realm (Acquisition of Land) Act, 1916 :—

Section 1 sub-section (1)
,, 2 ,, (2)
,, 3 ,, (2)
,, 6 ,, (3)
,, 13 ,, (1)
,, 13 ,, (5)

shall be served on all persons interested in the land, building or work to be affected by the proposed order.

An application shall also be served on all persons interested in the mines and minerals lying under the land if it is sought to acquire an interest therein;

(b) under section 6 sub-section (1) shall be served on the local authority and the authority or person responsible for the maintenance of the highway or of any other railway or tramway laid thereon and on such other persons (if any) as the Commission may direct;

(c) under section 7 shall be served on the company or authority against whom the order is sought and also upon any company person or authority interested in the continuance or discontinuance of the supply referred to in the proceedings.

Any party may in case of difficulty as to the parties to be served or as to the mode or place of service apply to the Commission for directions at any time before the hearing of the proceedings. Such application may be made

(*k*) 63 & 64 Vict. c. 27.
(*l*) 4 Edw. 7, c. 19.
(*m*) 6 & 7 Geo. 5, c. 63, and 10 & 11 Geo. 5, c. 79.

ex parte in the first instance, but the Commission may order notice thereof to be served on such persons and authorities and in such manner as they may think fit.

(3) An application to fix the time to be allowed under section 8 sub-section (1) (a) and (b) may be made to the Registrar by summons.

(4) If on a reference under section 8 (1) (b) of the Act the award of the Referee is final and not stated in the form of a special case an appeal from his decision on any question of law may be brought within 4 weeks from the time when the award was published. The party so appealing shall within such time file in the Registrar's Office a notice of appeal stating the grounds of the appeal. Such notice shall be served upon all parties directly affected by the appeal. The Commission may on the hearing of such appeal remit the award to be stated in the form of a case or otherwise deal with it as may seem just.

(5) The parties to a reference under section 8 (1) (b) of the Act may before or during the hearing of the reference file a joint application to the Commission for their decision on an agreed question of law.

(6) The Commission or the Registrar may abridge or enlarge the time for serving any notice or doing any other act provided by these Rules. Time may be enlarged notwithstanding that the time for serving the notice or doing the act may have expired.

The Commission may amend any notice or other document on such terms as may seem just.

Consents by the Commissioners under 6 & 7 Geo. 5, c. 63, s. 6, sub-s. 3.

26. Every application made to the Commissioners under section 1 of the Railway and Canal Commission (Consents) Act, 1922 (*n*), is subject to rule 25 so far as it relates to section 6, sub-section 3 of the Defence of the Realm (Acquisition of Land) Act, 1916.

Railway services facilities and conveniences.

27. Every application under section 16, sub-section 1, of the Railways Act, 1921, shall be for an Order to require any railway company or companies to afford such reasonable railway services, facilities and conveniences as therein specified.

Mines (Working Facilities and Support) Act, 1923.

28.—(1) Upon a reference under the Mines (Working Facilities and Support) Act, 1923 (*o*), of any matter by the Board of Trade to the Railway and Canal Commission the Board shall lodge with the Commission all papers, documents, plans and material deposited by the applicant with the Board for the purpose of procuring the reference.

(2) The Board of Trade shall give notice to the applicant of the lodging of such reference with the Commission within three days after the reference has been lodged.

(3) Within 10 days of the date of the notice by the Board of Trade that a reference has been lodged the applicant shall apply to the Registrar to fix a date for the hearing by the Commission of a summons for directions as to the procedure to be followed upon such reference and the Registrar shall give notice to the Board of Trade of the date of the hearing of such summons.

(4) Except as is herein provided the Rules of the Railway and Canal Commission Courts shall apply.

Procedure under special Acts.

29. The procedure in cases under the following Acts shall be in each case as nearly as may be the same as that directed to be taken by the rules in proceedings under the 8th section of the Regulation of Railways Act, 1873, or the same as that obtaining in arbitration, or the same as that provided by the forms in the schedule hereto.

(a) Differences between the Postmaster-General and any company referred to the Commission under the provision of section 19 of the Regulation of Railways Act, 1873, or the Post Office Acts, 1908 to 1920, or any similar Act giving similar power.

(b) Differences referred to the decision of the Commission by the Board of Trade under the provisions of the Board of Trade Arbitration Act, 1874 (*p*).

(c) Differences required by sections 4 and 5 of the Telegraph Act, 1878 (*q*), to be referred to the decision of the Commission.

(d) Differences between the Postmaster-General and any company referred to the Commissioners under the provisions of sections 1 and 2 of the Conveyance of Mails Act, 1893 (*r*).

(*n*) 12 & 13 Geo. 5, c. 47.
(*o*) 13 & 14 Geo. 5, c. 20.
(*p*) 37 & 38 Vict. c. 40.
(*q*) 41 & 42 Vict. c. 76.
(*r*) 56 & 57 Vict. c. 38.

(e) Differences between the Postmaster-General and any person referred to the Commissioners under the provisions of sections 3, 5 and 6 of the Telegraph (Construction) Act, 1908 (*s*).

(f) Differences between the Postmaster-General and any body or person referred to the Commissioners under the provisions of section 1 of the Telegraph (Arbitration) Act, 1909 (*t*).

(g) Differences required by section 3 of the Telegraph (Construction) Act, 1911 (*u*), to be referred to the decision of the Commissioners.

(h) Differences required by section 1 of the Telegraph (Construction) Act, 1916 (*x*), to be referred to the decision of the Commissioners.

(i) Differences required by section 22, sub-section 2 (c) of the Electricity (Supply) Acts, 1919 (*y*), to be referred to the decision of the Commissioners.

(j) Differences required by section 3, sub-section 2, section 8, sub-sections 1, 3, 4 and 5, and section 14, sub-section 1 of the Ministry of Transport Act, 1919 (*z*), to be referred to the decision of the Commissioners.

(k) Any complaint made to the Commission in pursuance of any statute against any Railway or Canal Company.

Reference under Cheap Trains Act, 1883.

(*a*) 30. When the Minister of Transport under the provisions of the Cheap Trains Act, 1883 (*b*), has referred any matters contained in the said Act for the decision of the Commissioners, the railway company or companies concerned shall, on receiving notice from the Commissioners to do so, file an answer within such time as the Commissioners may order to the allegations contained in the order of the Minister of Transport referring the matter as aforesaid.

Payment into and out of Court.

31. Where under Part I of the Mines (Working Facilities and Support) Act, 1923, the Commissioners have determined that a right should be granted subject to the payment of compensation or consideration, and have ordered the payment into Court of money, being the whole or any part or any sum on account of the compensation or consideration, the money shall be paid, in English and Irish cases, into the Supreme Court, and in Scotch cases into the Court of Session.

An order for the payment of any such money into or out of Court, shall be signed by the Registrar and counter-signed by one of the Commissioners.

In English and Irish cases the manner of payment into and out of Court and the manner in which money in Court shall be dealt with shall, subject as aforesaid, be regulated by the Supreme Court Funds Rules in force for the time being, so far as they are applicable.

Filing Application.

Filing application at the Commissioners' office.

32. Every application to which any of the foregoing rules apply shall be indorsed as required by Rule 7 and filed with the Registrar to the Commissioners (hereinafter in these rules called "the Registrar") at their office, and except in cases under sections 10 and 16 of the Regulation of Railways Act, 1873, three copies of the application shall also be left with the Registrar. The Registrar shall make out a list of the applications so filed according to the order in which they are received by him, and such list may be inspected at the office during office hours. The applications shall be heard by the Commissioners so far as it may in their judgment be practicable according to the order in which they are so entered upon the list.

(*s*) 8 Edw. 7, c. 33.
(*t*) 9 Edw. 7, c. 20.
(*u*) 1 & 2 Geo. 5, c. 56.
(*x*) 6 & 7 Geo. 5, c. 40.
(*y*) 9 & 10 Geo. 5, c. 100.
(*z*) 9 & 10 Geo. 5, c. 50.
(*a*) Powers of Board of Trade transferred to Minister of Transport by 9 & 10 Geo. 5, c. 50, s. 2.
(*b*) 46 & 47 Vict. c. 34.
(*c*) The provisions of the rules and the forms referred to are set out in the Second Schedule.

Indorsement on Application.

Indorsement upon application.

33. In all proceedings (except proceedings under sections 8, 9, 10, and 19 of the Regulation of Railways Act, 1873, and subject to Rule 36 of these rules) a copy of the application shall be indorsed with a notice to the defendant to put in an answer to the application within 15 days from the service thereof, and that in default of such answer being put in within the time named, or any extension thereof duly granted, the Commissioners may proceed to hear the said application *ex parte*. Such indorsement shall be according to Form No. 2 in the First Schedule hereto (*d*), and shall be sealed by the Registrar with their seal.

34. Where the Minister of Transport under the Cheap Trains Act, 1883, has referred any matters for the decision of the Commission the railway company or companies concerned shall, on receiving notice from the Commission to do so, file an answer within such time as the Commission may order to the allegations contained in the order referring the matter as aforesaid.

Service of Application.

Service of application.

35. A copy of the application indorsed as aforesaid shall in all cases (except under sections 9 and 10 of the Regulation of Railways Act, 1873, and subject to Rule 36 of these rules) be served by leaving the same with the manager, secretary, or chief clerk of the defendant at his principal office in any part of the United Kingdom, or in such manner as the Commissioners by special order may direct, but no such personal service shall be necessary when the defendant's solicitor or agent undertakes in writing to accept service of such copy on his behalf.

Suspension of Proceedings.

Communication by Commissioners to company complained of.

36. If the Commissioners think fit, in pursuance of section 7 of the Regulation of Railways Act, 1873, to communicate an application to the company against whom it is made, so as to afford them an opportunity of making observations thereon before requiring or permitting any formal proceedings to be taken thereon, they shall give notice thereof to the applicant within seven days from the date of the application having been left at their office, and thereupon all formal proceedings thereon shall be suspended until further notice from the Commissioners to the applicant.

Commissioners requiring further information.

37. The Commissioners may also within the said period of seven days, or at any time thereafter, require further information or particulars or documents from the applicant, and may suspend all formal proceedings upon the application until satisfied in this respect.

Inquiries under the Act of 1854.

38. If the Commissioners at any stage of the proceedings think fit to direct inquiries to be made under section 3 of the Railway and Canal Traffic Act, 1854, they shall give notice thereof to the parties to the application, and may stay proceedings, or any part of the proceedings thereon, until further notice from the Commissioners.

Consent Cases.

Parties dispensing with formal proceedings.

39. In all cases the parties may, by consent in writing, dispense with the formal proceedings hereinafter mentioned, or some portion of them, and orders by consent may be drawn up, and, if approved of by the Commissioners, may be sealed with their seal.

Answer.

Form of and time for filing and delivery.

40. Within 15 days from the service of the application, or within such shorter or extended time as may be fixed by the Commissioners, the defendant shall file, with the Registrar, their answer to the application, and leave with him three copies of the same, and the defendant shall within such time, deliver to the applicant or to his solicitor a signed copy of the answer. The answer shall contain a clear and concise statement of the facts which form the ground of defence, or of any other objections relied upon. It may admit the whole or any part of the facts stated in the application. It shall be

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(*d*) The Forms in the Schedules to the Railway and Canal Commission Rules are omitted and the forms applicable to mining cases will be found in Appendices III, IV and V.

divided into paragraphs numbered consecutively, and it shall be signed by the person actually making the same, and who is acquainted with the facts stated therein. It shall be indorsed with the name and address of the defendant, and if there be a solicitor acting for him in the matter, with the name and address of such solicitor, and if he be an agent for another solicitor in the matter, then also with the name and address of such other solicitor. It shall be according to Form No. 4 in the First Schedule hereto (*e*) or to the like effect.

Reply.

Form of and time for filing and delivery.

41. Within six days from the delivery of the answer to the applicant, or within such shorter or extended time as may be fixed by any special order of the Commissioners, the applicant shall file his reply (if any) with the Registrar, and leave with him three copies of the same, and shall within such time deliver to the defendant or to his solicitor a copy of the reply. The applicant, in such reply, may object to the said answer as being insufficient, stating the grounds of such objection, or deny the facts stated therein, or may admit the whole or any part of such facts. The reply shall be signed by the applicant, his solicitor, or agent, and be according to Form No. 5 in the Schedule hereto, or to the like effect.

Pleadings after Reply by Leave.

Pleadings after reply.

42. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Commissioners.

Close of Pleadings by implied Joinder.

Close of pleadings on default

43. If the applicant does not deliver a reply, or any party does not deliver any subsequent pleading within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all material statements of facts in the pleading last delivered shall be deemed to have been denied and put in issue.

Power to direct and settle Issues.

Commissioners may direct issues.

44. If it appear to the Commissioners at any time that the statements in the application or answer, or reply, do not sufficiently raise or disclose the issues of fact in dispute between the parties, they may direct them to prepare issues, and such issues shall, if the parties differ, be settled by the Commissioners.

Preliminary Questions of Law.

Commissioners may decide prelimnary questions of law.

45. The Commissioners may, by consent of the parties to any proceedings before them, or on the application of either party, order any point of law raised by the pleadings to be set down for hearing and disposed of at any time before the hearing of the application. The argument of such point of law shall take place before not less than three Commissioners, and upon such hearing, if, in the opinion of the Commissioners, the decision of such point of law substantially disposes of the whole application, the Commissioners may order that the argument shall be the hearing of the case, and thereupon may grant and dismiss the application or make such other order therein as may seem to them just.

Preliminary Meeting.

Commissioners may hold preliminary meeting.

46. If it appear to the Commissioners at any time before the hearing of the application that it will be to the advantage of the parties to hold a preliminary meeting for the purpose of fixing or altering the place of hearing, determining the mode of conducting the inquiry, the admitting of certain facts, or the proof of them by affidavit, or for any other purpose, they shall have power to hold such meeting upon giving notice thereof to the parties, and may thereupon make such order as shall seem to them fit under the circumstances.

(*e*) See note on p. 158.

Preliminary Communication with the Parties.

Commissioners may communicate with parties.

47. The Commissioners may, if they think fit, instead of holding such meeting as in the preceding rule mentioned, communicate with the parties in writing, and may require answers to such inquiries as they may think fit to make.

Interim Injunction.

Commissioners may grant interim injunction.

48. An interim injunction may be moved for at any stage of the proceedings. Such application (except as after provided) shall be made to and be disposed of by the *ex officio* Commissioner for the part of the United Kingdom in which the proceedings (under which the application is made) are depending. Notice of such application shall be given to the parties affected thereby at least two clear days before the application is moved: Provided that in cases of emergency it shall be competent to the *ex officio* Commissioner to grant the interim injunction sought without previous notice. An application to dissolve any injunction may be made at any time to the Commissioners on two clear days' notice to the party in whose favour the injunction was granted.

Discovery of Documents and Interrogatories.

Applications for discovery.

49. In England and Northern Ireland either party may, without filing any affidavit, apply to the Commissioners for an order to direct the other party to make discovery on oath of the documents which are or have been in his possession or power *relating to the matter in question*. In Scotland either party may apply to the *ex officio* Commissioner for an order on the other party to produce all documents which are in his possession or power *relating to the matter in question*, or either party may apply as aforesaid, for a diligence to recover all documents, in whosesoever possession they may be, relating to the matter in question. Provided that, in either case, the party making the application shall give to the other party at least three days' notice of his intention to make it, and shall (where a diligence is sought), with such notice, furnish a copy of the specification setting forth the documents for recovery of which a diligence is sought.

Interrogatories.

50. In England and Northern Ireland the applicant may, at any time after serving his application, and the defendant may, at or after the time of delivering his answer, by leave of the Commissioners, deliver interrogatories in writing for the examination of the opposite party.

Interrogatories shall be answered by affidavit to be filed within ten days or within such other time as the Commissioners may allow. The interrogatories may be answered partly by one person and partly by another or others, but in all cases the party answering any part thereof shall state in his answer that the matters stated by him are within his personal knowledge, and if any person interrogated omits to answer or answers insufficiently, the party interrogating may apply to the Commissioners for an order requiring him to answer, or to answer further as the case may be.

No payment into Court of a sum of money as deposit shall be required from a party seeking discovery by interrogatories or otherwise.

In Scotland either of the parties may at any time after the service of the application or lodging of the answer respectively, and before any proof has been adduced, present to the *ex officio* Commissioner a statement of facts which he desires to be answered by his opponent, and may move the *ex officio* Commissioner for an order on his opponent to answer the same, with which motion the *ex officio* Commissioner shall deal as appears just. Notice of such motion (accompanied by a copy of the statement of facts) to be served at least three days before the motion is to be heard.

Production and Inspection of Documents.

Production of documents on oath.

51. It shall be lawful for the Commissioners, at any time during the pendency of any matter before them, to order the production by any party thereto, upon oath, of such of the documents in his possession or power relating to any such matters as the Commissioners shall think right; and the Commissioners may deal with such documents, when produced before them, in such matter as shall appear just.

Documents referred to in pleadings.

52. Either party shall be entitled at any time before or at the hearing of the case to give a notice in writing to the other party in whose application or answer or reply reference is made to any document, to produce it for the inspection of the party giving such notice, or of his solicitor, and to permit him to take copies thereof, and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf

in such proceedings without the leave of the Commissioners, unless he satisfy the Commissioners that he had sufficient cause for not complying with such notice.

Notice to Produce.

Notice to produce.

53. Either party may give to the other a notice in writing to produce such documents as relate to any matters in difference (specifying the said documents), and which are in the possession or control of such other party, and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

Notice to Admit.

Notice to admit.

54. Either party may give to the other party a notice in writing to admit any documents saving all just exceptions, and in case of neglect or refusal to admit after such notice, the cost of proving such documents shall be paid by the party so neglecting or refusing, whatever the results of the application may be, unless at the hearing the Commissioners certify that the refusal to admit was reasonable, and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

55. In England and in Northern Ireland, Order 31 of the Rules of the Supreme Court shall be taken to be part of these Rules, substituting for the words " court " or " judge " the words " the Commission " or " the Registrar " so far as is consistent with these rules.

Notice of Discontinuance.

Notice where application withdrawn or settled.

56. When any application made to the Commissioners has been withdrawn or settled, the applicant shall immediately thereupon give notice thereof to the Registrar.

Witnesses.

Attendance of witnesses.

57. The attendances of witnesses, with or without documents, shall be enforced by subpœna, which may be sued out by either party requiring the attendance of such witness. Such subpœna shall be according to Forms No. 6 or 7 in the First Schedule hereto (*f*), and shall be sealed by the Registrar with the seal of the Commission and may be served in any part of the United Kingdom. The witness shall be entitled to the same protection as when subpœnaed or cited to attend the High Court of Justice, and the laws and practice in force for the time being relating to witnesses in that Court shall apply to them in proceedings before this Commission.

Appointing Date of Hearing.

Application to fix date of hearing.

58. The applicant, at the time of filing his reply (if any), or if the defendant make default in putting in his answer, or at any rate after the pleadings are closed, may apply to the Registrar to fix a date for the hearing. If the applicant does not within six weeks after the close of the pleadings, or within such extended time as the Commissioners may allow, apply to the Registrar to fix a date for the hearing, the defendant may do so. No such application shall be made without two days' previous notice in writing to the opposite party. If either of the parties fail to appear on the application to fix a day for hearing, notice of the day appointed shall be served within a time to be named by the Registrar.

Depositing maps, plans, etc.

The parties shall leave with the Registrar, six days before the day fixed for the hearing, any maps, plans, time-tables, and special Acts, or other documents referred to in the application, answer, reply, or other pleading, or which may be useful in explaining or supporting the same.

Fixing date of hearing.

59. The Commission may either fix a named day for the hearing of the cause or may direct that the cause shall be placed in the list of causes for hearing to come on in due rotation with a direction that the same shall not be heard before the named day.

The Hearing.

Power of Commissioners to proceed *ex parte*.

60. If the applicant does not appear at the time and place appointed for the hearing, the Commissioners may dismiss the application, and if the defendant does not appear at such time and place, and the Commissioners are satisfied that the notice of the hearing was duly served, they may hear and determine the application *ex parte*, and if at any adjournment of the hearing the parties or either of them do not appear, the Commissioners may decide the case in their absence.

(*f*) See note p. 158.

Evidence at the Hearing.

To be *viva voce* except in certain cases, and whether before or at the hearing.

61. The witnesses at the hearing shall be examined *viva voce*, but the Commissioners may at any time, and whether before or at the hearing, for sufficient reason, order that any particular facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing on such conditions as they may think reasonable, or that any witness whose attendance ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a person to be appointed by them for that purpose, provided that when it appears to the Commissioners that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

Depositions taken before a person authorised to take them may be read at the hearing without calling the deponents unless the Commissioners otherwise order.

Commissioners may require further evidence.

62. The Commissioners may require further evidence to be taken either *viva voce*, or by affidavit, or by deposition taken before a person appointed by them for that purpose.

Hearing to proceed from day to day.

63. The hearing of the case, when once commenced, shall proceed, so far as in the judgment of the Commissioners may be practicable and convenient, from day to day.

View.

Power of Commissioners to view.

64. In any case, in which in the opinion of the Commissioners, a view is necessary or desirable, it may be had by one or more Commissioners as they may direct.

Judgment of Commissioners.

Judgment of Commissioners.

65. After hearing the case the Commissioners may grant or dismiss the application, or make an order thereon in favour of the defendants, or reserve their decision, or make such other order upon the application as may be warranted by the evidence, and may seem to them just.

May be in writing and sent or delivered to the parties.

66. The Commissioners may give their decision in writing, signed by them, and it may be sent or delivered to the respective parties, and it shall not be necessary to hold a court merely for the purpose of giving such decision.

Enforcement of judgment.

67. Every order, decision or judgment of the Commission may be enforced by execution in the same way that the judgment of the High Court in England, the Court of Session in Scotland, and the High Court of Justice in Northern Ireland is enforced respectively and the respective rules of practice in these Courts in regard to execution shall form part of the practice of this Commission as if expressly included in these rules provided that in any case involving the liberty of the subject the order must be approved by the *ex officio* Commissioner.

Taxation of Costs.

Costs, how taxed.

68. Costs shall be taxed upon the order of the Commissioners under which they are payable, and such costs shall, if required, be taxed by the Registrar or such other person as the Commissioners may direct or by the Taxing Master of the High Court.

Alteration or Rescission of Order.

Alteration or rescission of orders.

69. Any application to the Commissioners to review and rescind or vary any decision or order previously made by them, and not being a decision or order upon an interlocutory application, nor under Rule 18 of these rules, shall be made within 28 days after the said decision or order shall have been communicated to the parties unless the Commissioners think fit to enlarge the time for making such application.

Any application to the Commissioners to review and rescind or vary any decision or order previously made by them upon an interlocutory application shall be made within 14 days after the said decision or order shall have been communicated to the parties, unless the Commissioners think fit to enlarge the time for making such application.

Every application under this rule shall be made by motion; and no such motion shall be made without two clear days' previous notice in writing to the Registrar and to the parties affected thereby.

Interlocutory Applications.

Interlocutory applications.

70. Where not otherwise provided for in these rules, all interlocutory applications shall, unless otherwise specially ordered, be heard by the Registrar

upon summons duly served, and may be determined in a summary way. Such application may, if the Registrar thinks fit, be adjourned, either before or at the time of hearing before him, into court for hearing before the Commissioners.

Any person affected by any order or decision of the Registrar in any matter involving questions of law may appeal therefrom to the *ex officio* Commissioner, and in any other matter to the Commissioners. Such appeal shall be by way of indorsement on the summons by the Registrar at the request of any party or by notice in writing to attend before the Commissioners without a fresh summons. Such notice shall be given to the Registrar and to the opposite party within four days after the decision complained of, or such further time as may be allowed by the Registrar or by the *ex officio* Commissioner, or the Commissioners.

An appeal from the Registrar's decision shall be no stay of proceedings unless so ordered by the Registrar or by the *ex officio* Commissioner, or the Commissioners.

Affidavits.

Affidavits, how framed.

71. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory proceedings, on which statements as to his belief with the grounds thereof may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents shall be paid by the party using or filing the same.

Before whom sworn.

72. Any affidavit used in any proceeding before the Commissioners may be sworn as follows :

In the United Kingdom before any of the said Commissioners or the Registrar, or the officer appointed by the Commissioners to administer oaths in proceedings before them (and in these cases without the payment of any fee), or before a person authorised to administer oaths in any of the superior courts, or before a commissioner empowered to take or receive affidavits, or before a justice of the peace for the county or place where it is sworn or made.

In Scotland, in addition to the above-mentioned persons, before any sheriff-depute or his substitute or a justice of the peace.

In any place in the British Dominions not in Great Britain, before any court, judge, or justice of the peace, or any person authorised to administer oaths there in any court.

In any place out of the British dominions, before a British minister, consul, or vice-consul.

The Commissioners shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, minister, consul, or vice-consul attached, appended, or subscribed to any such affidavit.

Filing of, and giving office copies of, and of other documents.

73. Affidavits used in any proceedings before the Commissioners shall be filed in their office, and office copies of the same and of other documents filed in their office may be procured by the parties on application to the Registrar.

Computation of Time.

Time, how computed.

74. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the Railway and Canal Traffic Acts, 1873 and 1888, or by these rules, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

What days to be excluded.

75. The days between Thursday next before and the Wednesday next after Easter Day, and the day appointed to be kept as the King's Birthday, and Whit Monday and Whit Tuesday, and Christmas Day, and the three following days, and the first Monday in August shall not be reckoned or included in any proceedings or orders of the Commission.

76. The time between the 1st day of August and the 12th day of October in England and Northern Ireland, and in Scotland between the 20th day of March and the 12th day of May, and between the 20th day of July and the 15th day of October, shall be reckoned in the computation of the times appointed or allowed by these rules unless otherwise ordered.

Registrar's Office, when open.

Registrar's office, when open.

77. The Registrar's Office shall be open daily from 10 o'clock in the forenoon till 4 o'clock in the afternoon, or till such later time as the Commissioners may direct, except upon Saturday, when it shall be open from 10 o'clock in the forenoon till 1 o'clock in the afternoon, and except between the 1st day of

August and the 12th day of October, when the office is to be open from 11 o'clock in the forenoon till 1 o'clock in the afternoon except on Saturday.

The office shall be closed on the following days, namely, Good Friday, Easter Eve, Monday, and Tuesday in Easter Week, Christmas Day and the three following days, and the day appointed to be kept as the King's Birthday, and Whit Monday and Whit Tuesday, and the first Monday in August.

Sittings of the Court.

Sittings of the Commissioners.

78. The sittings of the Commissioners shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings. The Michaelmas sittings shall commence on the 12th October and terminate on the 21st December; the Hilary sittings shall commence on the 11th January and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week and terminate on the Friday before Whit Sunday; and the Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 31st July.

Vacations.

79. Every *ex officio* Commissioner shall be entitled to the same vacations as are observed in the superior court of which he is a member. During the period observed as vacations in the Superior Court the Lord Chancellor in England, the Lord President of the Court of Session in Scotland, may appoint any Judge of a Superior Court to take the place and perform the whole functions of the *ex officio* Commissioner for the parts of the United Kingdom respectively, in case of the *ex officio* Commissioner being absent or temporarily unable to fulfil his duties.

Adjournment.

Power of Commissioners to adjourn.

80. The Commissioners may from time to time adjourn any proceedings before them.

Amendment.

Power of Commissioners to amend.

81. The Commissioners may at any stage of the proceedings allow any pleadings to be amended, or may order to be struck out any matters which may tend to prejudice, embarrass, or delay the fair hearing of the case, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Formal Objections.

Formal objections not to prevail.

82. No proceedings before the Commissioners shall be defeated by any formal objection.

Enlargement or Abridgment of Time.

Power to enlarge or abridge time.

83. The Commissioners or the Registrar, subject to an appeal to the Commissioners, may enlarge or abridge the time appointed by these rules, or fixed by any order, for doing any act or taking any proceeding upon such terms, if any, as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.

Enlarging time by consent.

The time for delivering, amending, or filing any answer, reply, or other pleading or document may be enlarged by consent in writing, without application to the Commissioners. Such written consent shall be left with the Registrar at the time of filing the answer, reply, or other pleading or document.

Transmission of Documents and Fees by Post.

Documents, etc., sent by post.

84. Where an applicant does not reside in London, and he has no solicitor or agent there, all pleadings and documents required by these rules to be sealed, filed in, or delivered at the Commissioner's office, may be sent by post, addressed to "The Registrar of the Court of the Railway and Canal Commission," and the fees payable (if any) in respect thereof may be sent by post, by post-office order, payable to "The Registrar of the Railway and Canal Commission," to the Registrar, who shall cause stamps to be procured to the amount of such remittances, or to be impressed. All letters, notices; or documents sent by post to the officers of the Commission shall be prepaid.

Northern Ireland.

85. In all cases pending in Northern Ireland the Chief Clerk of the *ex officio* Commissioner shall have power to issue a summons returnable before the *ex officio* Commissioner for the decision of any questions relating to practice or procedure. When an Order is made on such summons it shall be the duty of the Chief Clerk to forward the Order forthwith to the Registrar in London to be there sealed and filed. Office copies of such Order can be obtained on

application to the Registrar. An appeal will lie from the Order of the *ex officio* Commissioner to the Court of Appeal in Northern Ireland.

86. In all cases pending in Scotland application may be made to the *ex-officio* Commissioner for the decision of any questions relating to practice or procedure, and such applications shall be made through his chief Clerk who shall have power to issue any Orders made by him on such application to the Registrar in London to be there sealed and filed. Office copies of such Orders can be obtained on application to the Registrar in London. Scotland.

87. All pleadings and documents required by these Rules to be delivered at the Commissioners' Office may in cases pending before the Commission in Scotland be lodged with the Chief Clerk to the *ex officio* Commissioner, and it shall be the duty of the Chief Clerk to the *ex officio* Commissioner to forward all such pleadings and documents forthwith to the Registrar in London to be there sealed and filed. Office copies of all such documents can be obtained on application to the Registrar in London. Scotland.

88. In all cases where there has been undue delay in bringing the case to trial or in carrying out the order of the Court, the Court may issue a summons returnable in six days requiring the parties to explain the causes of the delay, and upon such summons such Order shall be made to expedite the proceedings, or to enter final judgment as to the Court may seem just. Undue delay.

Dated 12th December, 1924.

John Sankey.
Robert L. Blackburn.
Denis S. Henry.
E. Tindal Atkinson.
J. C. Lewis Coward.

Approved—
Cave, C.
W. Joynson-Hicks.

FOURTH SCHEDULE.

APPEALS UNDER THE RAILWAY AND CANAL TRAFFIC ACTS.

I.—IN ENGLAND.

RULE OF THE SUPREME COURT.

ORDER LVIII.

Rule 19A.—This Order shall so far as applicable apply to appeals from the Commissioners under the Railway and Canal Traffic Act, 1888, or from the Railway Rates Tribunal under the Railways Act, 1921.

This Rule shall apply and shall be deemed to have applied to any appeal from the Railway Rates Tribunal under the Railways Act, 1921, brought before these Rules came into operation.

II.—IN SCOTLAND.

CODIFYING ACT OF SEDERUNT, 1913.

Book D. Chapter 5.

(a) In any case where an appeal to the Court of Sessions from any judgment, order, or finding of the Railway Commissioners is competent under the Railway and Canal Traffic Act, 1888, the same may be taken by lodging with the Registrar of the Railway Commissioners a note of appeal in the form, or as nearly as may be in the form, set forth in the schedule appended hereto.

(b) It shall not be competent to appeal against any judgment, order, or

finding of the said Commissioners unless the note of appeal is lodged with the Registrar, as above provided, in the case of final judgment within fourteen days, and in the case of any interlocutory judgment, order or finding, within four days from the date of the judgment, order, or finding appealed against. Provided always that the Court may, on special cause shown, allow appeals notwithstanding they have not been taken within the respective periods above provided. A final judgment, in the sense of this rule, shall mean a judgment by the Commissioners disposing of the whole question or questions raised for their determination in the proceedings in which such judgment is pronounced: and all other judgments, orders, or findings by the Commissioners shall be regarded as interlocutory.

(c) The party appealing shall, within two days of lodging his note of appeal, intimate that he has done so to all the other parties to the proceedings in which the appeal is taken, by sending to them a copy of his note of appeal by registered letter.

(d) When any note of appeal has been lodged with the Registrar as before provided, he shall forthwith transmit the same, together with the whole pleadings and other proceedings before the Commissioners, to the Clerk of that Division of the Court to which the Appeal has been taken, who shall subjoin to the appeal a note of the day on which it is received.

(e) The respondent in any appeal, or any party to the proceedings in which the appeal is taken, may insist in the same to the effect of having the judgment, order, or finding appealed against, altered or modified, provided that at least three days before the appeal is heard he shall intimate by registered letter to all parties concerned or interested in such alteration or modification that he intends to do so, shall intimate at the same time the alteration or modification for which he intends to move.

(f) Within fourteen days after the appeal and proceedings have been received by the Clerk of Session, as aforesaid, the appellant shall print and box to the Court the note of appeal, the judgment, order, or finding appealed against, and such other part of the proceedings as may be necessary to be considered in disposing of the said appeal; and failing his doing so, the appeal shall be dismissed, unless the Court or the Lord Ordinary on the Bills in time of Vacation, shall have within said fourteen days dispensed with such printing. The respondent or other party desirous of obtaining any alteration or modification of the judgment, order, or finding appealed against, as provided in article (e) hereof, shall, before the day on which the appeal is to be heard, lodge with the Clerk, and print and box to the Court, a copy of the intimation sent by him, in terms of article (e).

Schedule.

The A. B. Railway Company (or C. D. merchant in Glasgow), appeals against the judgment, (or order, or finding) of the Railway Commissioners, dated the day of to the Division (specify *First* or *Second*) of the Court of Session.

(Signed by Appellant or his Law Agent.)

(Date.)

Or,

When a part only of the judgment, order, or finding is appealed against, the form given shall be used, adding the words: "In so far as the said judgment (Order, or finding) determines that" (specify the part of the judgment, etc., appealed against).

III.—IN NORTHERN IRELAND.

"The Rules of this Order shall, as far as applicable, apply to all appeals from the Commissioners under the Railway and Canal Traffic Act, 1888 (51 and 52 Vict. c. 25)."

Order LVIII.—Rule 21 of the Rules of the Supreme Court (Ireland), 1891.

APPENDIX II.

For Official Use.

Statutory Rules and Orders, 1924, *No.* 1024.

THE RAILWAY AND CANAL COMMISSION FEES ORDER, 1924.

Dated August 25, 1924.

We, the Railway and Canal Commissioners, with the concurrence of the Lords Commissioners of His Majesty's Treasury, in pursuance of the powers conferred upon us by The Regulation of Railways Act, 1873 (36 and 37 Vict. c. 48), and all other powers enabling us in this behalf, do hereby order as follows :—

1. The fees set out in the Schedule to this Order shall be taken in relation to proceedings before the Railway and Canal Commissioners.

2. Any day fee payable for the hearing of the case or in respect of an assessor shall be paid before the day of hearing by the party who has applied for the hearing, unless the Commissioners otherwise order.

3. The fees payable on interlocutory applications shall be paid before the Order is sealed and filed.

4. The fees shall be taken in stamps in accordance with the directions of the Treasury in force for the time being (*g*).

5. The Registrar may require the applicant to give security to his satisfaction for the payment of fees by means of a solicitor's undertaking or by depositing with the Registrar money to such an amount, and at such time or times, as he may think necessary. The Registrar shall give a receipt for any money so deposited, and shall procure the stamps corresponding to the fees so secured when their amount has been ascertained, and shall pay for the stamps out of the money deposited, and shall repay the balance, obtaining a receipt therefor from the applicant.

In Scotland the powers of the Registrar under this paragraph may be exercised by the Chief Clerk to the Official Commissioner.

6. The Railway and Canal Commission Fees Order, 1901 (S. R. and O. 1901, No. 932) shall be annulled.

7. This Order may be cited as the Railway and Canal Commission Fees Order, 1924, and shall come into operation on the 12th day of September, 1924.

Signed this 25th day of August, 1924.

John Sankey.
Robert L. Blackburn.
Denis S. Henry.
E. Tindal Atkinson.
J. C. Lewis Coward.

Frederick Hall, } Lords Commissioners of
John Robertson, } His Majesty's Treasury.

Schedule.

	£	s.	d.
1. Receiving and filing every application or statement of case or answer thereto	1	10	0
2. Receiving and filing every reply, affidavit or other reply ...	0	5	0
3. Every summons upon interlocutory proceedings	0	5	0
4. Every order made hereon	0	5	0
5. Attendance by Counsel on interlocutory proceedings each side	0	10	0
6. For every appointment for hearing	0	5	0
7. Every subpœna	0	5	0
8. Every hearing not in the nature of an interlocutory proceeding or of an arbitration or otherwise provided for	3	0	0

(*g*) Impressed stamps are prescribed by the Treasury Notices dated March 9, 1889 (see S. R. & O. Rev. 1904, Vol. II, "Railway," p. 65).

	£ s. d.
9. On drawing up and issuing under Seal an Order made in Court on the Original hearing	2 0 0
10. On filing a notice of Appeal :	
Interlocutory	2 0 0
Final	5 0 0
On filing a notice of Cross-Appeal :	
Interlocutory	1 0 0
Final	2 0 0
On sealing order made on the hearing of the Appeal :	
Interlocutory	1 0 0
Final	3 0 0
(or such other fees as may be prescribed by the Supreme Court Fees Order in force for the time being.)	
11. Office copies of proceedings (per folio)	0 0 6
12. On the allowance of the result of taxation, 2½ per cent. on amount allowed, provided that in any case a fraction of 6d. shall be reckoned as 6d.	2½ per cent.
13. Every hearing in the nature of an arbitration between railway companies and canal companies, or between railway companies and the Postmaster-General under the Railway and Canal Traffic Acts, 1854-1888, and the Conveyance of Mails Act, 1893, or any of them, each day or part of a day ...	15 15 0
14. Every decision of such difference	5 5 0
15. Every hearing in the nature of an arbitration, one of the parties being other than a railway company or canal company each day, or part of a day	5 5 0
16. Every decision of such difference	2 2 0
17. Every hearing under the Telegraph Acts, 1863-1924, or under the Railway Employment (Prevention of Accidents) Act, 1900, each day or part of a day	15 15 0
18. Every decision of such difference	5 5 0
19. Where the Commissioners require an assessor or assessors to sit with them, the applicant or such party or parties as the Commissioners may direct shall pay in respect of each assessor a minimum fee of £5 5s. or such increased fee as the Registrar may determine to be necessary to cover the remuneration of the assessor and his travelling expenses and subsistence allowance (if any).	

NOTES.

(1) The fees payable in all interlocutory applications shall be paid before the Order is sealed and filed.

(2) All fees shall be paid by stamps on the form applicable to the various proceedings respectively, and such stamps shall be sold and issued at the Royal Courts of Justice in London; Edinburgh at the Inland Revenue Office, Waterloo Place; in Belfast at the Inland Revenue Office, Custom House.

(3) The fees in this Schedule may be altered or varied by order of the Commissioners with the consent of the Treasury.

APPENDIX III.

SUMMONS FOR DIRECTIONS.

IN THE COURT OF THE RAILWAY AND CANAL COMMISSION.

IN THE MATTER of the Mines (Working Facilities and Support) Act 1923 and the Mining Industry Act 1926

and

IN THE MATTER of the Application of

LET all Parties concerned attend the Commission at the Royal Courts of Justice Strand in the County of London at o'clock in the noon on day the day of 19 on the hearing of an application on the part of the Applicants for an Order for such directions as to the Procedure as the Commission shall think fit.

DATED this day of 19 .

THIS SUMMONS was issued by (Solicitors for or on behalf of the applicants)

APPENDIX IV.

ORDER ON SUMMONS FOR DIRECTIONS.

IN THE COURT OF THE RAILWAY AND CANAL COMMISSION.

IN THE MATTER of the Mines (Working Facilities and Support) Act 1923 and the Mining Industry Act 1926

and

IN THE MATTER of the Application of

UPON READING the Application filed herein on the day of 19 and an Affidavit of filed herein on the day of 19 and on hearing Counsel for the Applicants the the following directions as to the application they desire to make under the above-mentioned Act are hereby given

AND IT IS ORDERED that the Applicants do insert an Advertisement to be approved by the Registrar of this Court of their claim and of their right to proceed three times in each of the following papers, viz :—

before the day of next, the form of Advertisement to give the best and fullest particulars of what the Applicants intend to ask this Court and to state that the persons who have any objection to the Applicants being granted the right asked for must send their objections, the grounds of their objection, and their names and addresses to the Registrar of this Court by the day of next; And the said Advertisement must also state that a plan showing the area of the proposed workings and the Districts affected thereby has been deposited at the office of the Solicitors to the Applicants at and at the offices of the applicants at the and may be inspected at any time during business hours by any person wishing to do so and if necessary copies thereof or extracts therefrom taken by any person wishing to do so

AND IT IS ORDERED that in addition to the Advertisement in the papers stated Notices of the Application are to be posted by the Applicants within the boundaries of the Parish of at such places as the Registrar may direct

AND IT IS ORDERED that a copy of the Application and of this Order be forthwith served upon :—

and

AND IT IS ORDERED that copies of this application and the plan annexed thereto be deposited at the applicants Colliery Offices at and at the Office of the Solicitors to the Applicants, Messrs. and that the same may be inspected and copies of or extracts taken by any person who may wish to do so

AT a date subsequent to the said day of next this Court itself will make an Order as to the persons who shall appear (if any) at the hearing and Notice will be sent to any objector to whom this Court gives leave to appear

AND this Court will proceed to the hearing of the application at the Royal Courts of Justice Strand London on a date to be hereafter fixed.

Liberty to apply.

DATED this day of 19 .

APPENDIX V.

ORDER ON SUMMONS FOR DIRECTIONS

IN THE COURT OF THE RAILWAY AND CANAL COMMISSION.

IN THE MATTER of the Mining Industry Act 1926 Part I

and

IN THE MATTER of the Application of

UPON READING the Application of the above named Companies filed on the day of 19 and UPON READING the Scheme for Total Amalgama-

tion thereto annexed and the Affidavits of , and respectively filed on the day of 19 and the several exhibits therein mentioned.

IT IS ORDERED that within fourteen days from the date of this Order a notice be sent by post to all persons or companies whose names appear in the first column of Exhibit to the said Affidavit of the said and in the third column of the Schedule to the said Affidavit of the said at the respective last known addresses of such persons or companies respectively or at the last known addresses of their respective Solicitors or other agents mentioned in such Exhibit and Schedule respectively enclosing a print of the Application to this Court and of the scheme of Amalgamation and informing each such person or Company that if he she or it has any objections to the scheme such objections together with the grounds thereof should be stated in writing and forwarded addressed to the Registrar of the Railway and Canal Commission, Room 772, Royal Courts of Justice, Strand, London, W.C.2 on or before the day of 19 .

AND IT IS ORDERED that within seven days after the posting of the said Notices an Affidavit or Affidavits be filed proving the due service of the said Notice by post.

AND IT IS ORDERED that in addition to such notices the applicants shall insert three advertisements to be approved by the Registrar of the Court of their Application and of the said Scheme for Amalgamation in each of the following papers :—

One such advertisement to be inserted in each of the above papers in each of the weeks ending , , and 19 respectively. The forms of the Advertisement shall state that copies of the scheme and of the Application for confirmation thereof by this Court can be seen at the registered office of either the or the , or at the office of the Registrar of this Court and that copies thereof may be made and shall also state that persons who have any objection to the scheme must state their objections and the grounds thereof in writing together with their names and addresses and particulars of the nature of their interest to the Registrar of this Court on or before the day of 19 .

AND IT IS ORDERED that within seven days after the insertion of the last of the said advertisements in the said newspapers an Affidavit or Affidavits be filed proving the due insertion thereof.

AND IT IS ORDERED that in addition to such notices and advertisements as are hereinbefore directed each of the applicants shall exhibit in a prominent position at each of their respective collieries a notice of this Application to the Court for confirmation of the said scheme stating that upon the question whether the scheme is in the national interest this Court will hear such persons, whether in support of or against the scheme, as they may think fit, including representatives of persons employed in the undertakings affected by the scheme, such notice to be approved by the Registrar.

AND IT IS ORDERED that within seven days after the exhibiting of the said Notices an Affidavit or Affidavits be filed proving the due exhibition thereof.

AND IT IS ORDERED that further Meetings of shareholders of all the above-named companies other than for the purpose of approving this the said Scheme or the application for the confirmation thereof by this Court shall be dispensed with.

AND IT IS ORDERED that do convene a meeting of the persons who on the day of 19 were the registered holders of shares in that Company, to be held in within one month from the date of this Order, for the purpose of considering, and, if thought fit, approving (with or without modification) the said Scheme.

AND IT IS ORDERED that at least ten clear days before the day appointed for such meetings a notice convening the same and enclosing a print of the Scheme and of the application to this Court and a properly stamped form of Proxy in the form settled by the Registrar together with a stamped addressed envelope for the return of the Proxy be sent by pre-paid letter addressed to each of such registered holders to the respective addresses appearing on the register of shareholders, and that or failing him some other director of the said Company nominated by him be appointed chairman of the meeting.

AND IT IS ORDERED that within seven days after the holding of the said meeting an Affidavit proving the due service by post of the Notice of the

said meeting and of the result of the said meeting be filed. On a date subsequent to the day of 19 this Court itself will make an Order as to the persons if any who may appear at the hearing of this application and this Court will give notice to every objector whom it may authorise to appear.

THIS COURT WILL PROCEED with the hearing of this Application at a.m. on the 19 .

APPENDIX VI.

IN THE MATTER of the Mines (Working Facilities and Support) Act 1923
and
IN THE MATTER of the Application of .

WHEREAS an Application has been made to the Court of the Railway and Canal Commission (hereinafter called "the said Court") in pursuance of sub-sections 1 and 3 of Section 5 of the Mines (Working Facilities and Support) Act 1923 (hereinafter called "the said Act") for an order granting to the (hereinafter called "the Applicants") the right to work certain minerals in accordance with the provisions of Section 1 of the said Act the said minerals consisting of the and Seams of Coal situate in and beneath the district of the City of

AND WHEREAS the said Court by an Order dated the 10th day of April (*inter alia*) ordered that certain notices should be posted within the boundaries of the said City of and that sufficient notice should be given by way of advertisement together with the aforesaid notices to every local or other authority company or person who are or may be desirous of bringing before the said Court any objection respecting the said Application and to make such application to the said Court as they may determine.

NOTICE IS HEREBY GIVEN that the Applicants as hereinbefore stated have applied to the said Court for such order as aforesaid to work the said seams of coal in the areas following :—

In the Seam under an area of approximately acres or thereabouts situate in the Parishes of
in the City of , the lands being bounded as follows :—

(*Full particulars of area and boundaries to be set out.*)

In the Seam under an area of approximately acres or thereabouts situate wholly within the area above described, the lands being bounded as follows :—

(*Full particulars of area and boundaries to be set out.*)

AND NOTICE IS HEREBY FURTHER GIVEN that a copy of the said application has been deposited with the said Court and copies thereof may be obtained at the office of the Solicitors to the Applicants as hereafter set out AND NOTICE IS HEREBY FURTHER GIVEN that should the said Order be made by the said Court in accordance with the said application the Applicants will pay by way of royalty such sum or sums by way of compensation to the owners of the coal situated in the aforesaid and Seams as the Court may determine and will accept full liability for any damage that may be sustained by surface owners or others by the workings of the said seams of coal AND NOTICE IS HEREBY FURTHER GIVEN that maps showing the area of the proposed workings and the districts affected thereby and the method of working with the object of avoiding damage to the surface have been prepared and may be seen at any time during business hours at the Office of the Solicitors to the Applicants Messrs. . AND NOTICE IS HEREBY FURTHER GIVEN that every local authority or other authority company or person desirous of bringing any objection respecting the said application before the said Court must do so on or before the day of by letter addressed to the Registrar of the Railway and Canal Commission Court,

Royal Courts of Justice, Strand, London, W.C. 2 and every such objection should contain

(1) The name and address of the public authorities, bodies or other person so objecting;

(2) In what capacity they are interested the position of their holding and particulars of their right and interest therein;

(3) The grounds of their said objection.

DATED this day of 19 .

Solicitors to

(*Address to come here*).

APPENDIX VII.

Final Order.

IN THE MATTER of the Mines (Working Facilities and Support) Act 1923
and
IN THE MATTER of the Application of .

UPON READING the Application of
(herein called " the Applicants ") filed herein on the day of , 19 .
AND UPON HEARING Counsel for the Applicants and for the Objectors

(all of whom are together hereinafter referred to as " the Objectors ")

THE COMMISSION BEING of opinion that it is expedient in the national interest that the rights applied for by the Applicants should be granted to them

IT IS ORDERED that the Applicants be granted the right to work the minerals and other rights specified in the Schedule hereto subject to and in accordance with the terms and conditions and for the period therein mentioned

LIBERTY for the Applicants, the Objectors, the Committee hereinafter mentioned, and all owners of surface or mineral rights in the area marked on the Plans attached hereto to apply as they may be advised.

The Commission may review, and rescind or vary this Order.

THE SCHEDULE.

1. THE Minerals in question are those comprised in the Seam of Coal and the Seam of Coal within and under certain lands roads streets watercourses and hereditaments (hereinafter referred to as " the said lands ") situate at and in the of and which are delineated on the plans hereto annexed signed by the Registrar of the Commission and numbered respectively Number 1 and Number 2, Plan Number 1 showing the said lands under which the Seam of Coal may be worked and Plan Number 2 showing the said lands under which the Seam of Coal may be worked.

2. THE method of working is to be by underground workings only as shown on the said respective plans whereby a proportion only of the coal is extracted the remainder being left unworked and ungotten in the form of permanent pillars for the support of the surface with power for the Applicants and the Objectors to apply to the Commission from time to time to vary the same.

3. THE Applicants shall be at liberty to convey through each hereditament separately owned within the area, Coal and Coal worked and gotten from under other lands and hereditaments.

4. THE consideration to be paid for the coal worked and gotten by the Applicants is to be at the rate of per acre in respect of the Seam and per acre in respect of the Seam irrespective of

thickness such consideration to be due and payable as soon after the day of and the day of in each year next following the working of the coal.

5. IN computing the consideration fair and proper allowances shall be made in respect of any faults, faulty ground and bad or unmarketable coal. In case of any difference arising under this paragraph the said difference to be referred to the Commission.

6. THE term during which the Applicants may work the coal shall expire on the day of 19 .

7. THE Applicants shall keep accurate plans on the scale of not less than 2 chains to an inch showing the extent of the workings and their relationship to the surface such plans to be brought up to date at intervals of not less than six months. A duplicate of such plan so brought up to date shall be deposited with the Board of Trade and be open to inspection by or on behalf of any owner situated in the respective areas in relation to which this Order has been made.

In the event of the Board of Trade being unwilling to retain custody of the said copy or duplicate plans, or declining to allow inspection as aforesaid, application for directions may be made to this Commission by or on behalf of any owner aforesaid by the Applicants. The Applicants shall keep accurate accounts of the area worked out from time to time of the various properties affected by this Order.

8. THE Applicants shall work the coal hereby authorised to be worked and gotten in a proper and workmanlike manner and in accordance with the most approved method of working similar Mines in the District and in accordance with the method for the time being in force pursuant to this Order. In the event of any difference arising under this paragraph the said difference to be referred to the Commission.

9. As to all the Objectors other than the the Applicants shall give notice when their workings in either seam reach a point equivalent to a distance of one-half the depth of the seam from the surface from the boundary of the property of an Objector. Workings in the Seam shall precede workings in the Seam and the latter seam shall not be worked under the surface of the land of any Objector or under the land within 100 yards therefrom until a period of 3 years after the Seam has been worked and gotten under the respective portions of the said lands in which it is intended to work the Seam.

10. As to this further provision shall apply: The Applicants are not to work the Banks marked A and B in the Plan Number 1 until a date 3 years after the Banks marked C and D have been worked out as far as the and notice of such intended working shall have been given to the said Company but the Applicants can proceed forthwith to work the said Banks C and D without giving further notice.

11. UPON receipt of any notice hereinbefore provided for, the Objector to whom such notice shall have been given shall have liberty to apply to the Court for the reconsideration of this Order.

12. THE Applicants shall not let down the surface of any part or parts of the said lands or any neighbouring hereditaments nor interfere with the stability of any buildings works or structures for the time being on such respective lands or hereditaments. In case any damage shall be caused to such respective lands or hereditaments or any buildings works or structures for the time being thereon by reason or in consequence of the working and getting of the minerals hereby authorised to be worked or the leaving of pillars or barriers or otherwise howsoever in connection with the exercise of the right granted by this Order, then the Applicants shall be responsible and pay compensation for such damage and in case of any difference arising under this paragraph the said difference shall be referred to the Commission, all claims in respect of the mine compensation shall be similarly referred.

13. THE Applicants shall comply with all Statutory obligations and nothing in this Order contained shall relieve them of their liability to observe the provisions of the Mines Act 1911 Statutory Rules or any other Statute relating to Mines and Statutes, rules and orders or any rules orders or regulations made thereunder.

14. A local Committee representing the Owners of the said minerals in the said area shall forthwith be elected consisting of five local persons (three to be a quorum) who shall be elected at a meeting of such owners or their

representatives to be held in Sheffield. The Registrar of the Commission shall forthwith give directions for the convening of such meetings and shall preside thereat. The Committee shall from time to time forthwith fill up any vacancies on the Committee.

15. THE Registrar of the Commission shall prepare and issue rules of procedure for the Committee and shall have power to vary the same from time to time.

16. SUCH Committee when constituted shall appoint a local firm of Mining Engineers to act as their Agents who when appointed shall have power to enter the Mines of the Applicants and inspect and survey the workings of the Applicants in the said area and to examine plans and accounts and make extracts and copies therefrom and thereof.

17. SUCH Committee shall determine what moneys are due from the Company each day of and each day of in respect of coal worked and gotten during the previous half year and shall apportion the amounts due by way of royalties to the persons who in their judgment are entitled thereto and report their decision to the Registrar of the Commission and furnish an account of the out-of-pocket expenses incurred in connection with the inquiry. The Registrar shall certify the amounts due from the Colliery Company to the persons entitled thereto and certify the out-of-pocket expenses necessarily incurred by the Committee. After payment by the Applicants of the sums of money so certified by the Registrar to be due the liability for making further payment in respect of the coal worked and gotten by the Applicants shall cease subject and without prejudice nevertheless to the continuing liability of the Applicants under paragraph 12 of these conditions provided that the Official Commissioner may by special leave grant leave to appeal from any decision so certified.

18. ONE half of the expenses certified by the Registrar as properly incurred by such Committee in carrying out their duties under this Order (including the professional charges of the said mining engineers) shall be deducted *pro rata* from the monies certified to be due and payable to individual owners of coal from time to time worked and gotten in the said area as will recoup them for the necessary expenses incurred by them. The remaining one half of the said expenses incurred by the said Committee shall be paid by the Applicants.

19. IN case of default by the Applicants in making payment for 30 days after the same shall be certified to be due the said local Committee as representing the owners interested shall have power to distrain any chattels of the said Applicants in or about the mines which are authorised to be worked or any neighbouring colliery lands or works held or occupied by the Applicants in connection with such mines rendering any realised surplus to the Applicants.

20. THE Applicants shall pay and bear all rates taxes and impositions payable in respect of the mines and minerals forming the subject of this Order.

21. THE Applicants shall not assign nor underlet or part with the rights hereby granted to them without the previous sanction of this Commission.

22. *Mutatis mutandis* the powers conferred by section 83 (1) and the penalty imposed by section 84 (1) of the Railways Clauses Consolidation Act 1845 as re-enacted and amended by Part II of the Mines (Working Facilities and Support) Act 1923 shall be applicable hereto in the same way as though the said lands were a railway or works of a railway company and the owners of such lands or the minerals thereunder were a railway company.

23. ON receipt of a notice in writing under this paragraph from the Owners of any part of the surface of the said lands or any buildings or works for the time being thereon specifying the surface or buildings or works in which such owners are interested the Applicants shall give written notice to such owners as soon as the Applicants begin to work coal in such seam within a distance equivalent to one half of the depth of the seam at that point from the said specified surface or building or works.

24. IN case it shall at any time or times during the said period be shown by any owner interested to the satisfaction of the Commission that the stability of the said lands or of any neighbouring hereditaments or of any buildings or works thereon respectively has been interfered with or might be endangered or affected by reason or in consequence of the operations or omissions of the Applicants or the exercise of the said right to work then it shall be competent for this Commission to stop the further working of all or any parts of the said seams of coal or either of them and to rescind, alter

or vary the terms and conditions of this Order in such manner as it may think fit.

25. WHERE the person or persons to whom any compensation or consideration is payable under this Order cannot be found or ascertained the compensation or consideration due to such person or persons shall be paid into the Court of the Railway and Canal Commission.

26. UNLESS the context otherwise implies the term "owners" used herein includes persons interested in the said lands and hereditaments and the buildings and works for the time being thereon. Persons who are not *sui juris* may be represented in the manner prescribed by the Settled Land Acts 1882 to 1890 or any modification thereof.

LIBERTY to apply, to vary, rescind or alter this Order.

Dated the day of 19 .

APPENDIX VIII.

ANALYSIS OF THE ORDERS MADE UNDER THE MINES (WORKING FACILITIES AND SUPPORT) ACTS, 1923 AND 1925, AND MINING INDUSTRY ACT, 1926.

Additional Clauses.

CRAWSHAW AND WARBURTON LIMITED.

Liberty to let down surface and provision for compensation in case of damage.

(3) The Applicants shall be at liberty to let down the surface of the said lands on condition that they make good or pay compensation as hereinafter set out for all actual damage caused by their workings of the said minerals to the surface of the said lands and to existing and future buildings situate or to be situate thereon.

Provision for payment of consideration.

(6) The said Harold Frederic Atter shall pay the said consideration to the person or persons entitled thereto on production of such documents of title or other evidence as shall satisfy the said Harold Frederick Atter that the person or persons to whom the said consideration is paid is or are the person or persons in whom the said minerals are for the time being vested and in the event of any difference arising under this paragraph the said difference shall be referred to the Registrar of the Commission.

Receipt of such payment, form of.

(7) Any person or persons to whom any such payment is made by way of consideration as aforesaid shall give to the said Harold Frederic Atter a receipt for such payment in the following form :—

RECEIVED this day of from Harold Frederic Atter in pursuance of an Order of the Court of the Railway and Canal Commission dated the day of and made "In the Matter of the Mines (Working Facilities and Support) Act 1923 and in the matter of an application of Crawshaw and Warburton Limited" the sum of £ being the consideration payable by Crawshaw and Warburton Limited for working the Beeston and Black Bed Seams of Coal in accordance with the terms of the said Order under hereditaments at Bank Top, Earlsheaton, in the County Borough of Dewsbury, containing the area of and distinguished on the plan annexed to the said Order by the Number and the colour . Subject to the payment of compensation for damage as provided in the said Order.

A copy of such receipt signed by the said Harold Frederic Atter on behalf of the Applicants shall be given by him to every such person or persons as aforesaid.

J. C. JENKINS & COMPANY.

Ancillary rights.

(2) The ancillary rights granted are as follows :—

(a) A right to use and occupy the surface of the land belonging to the Nantyglo and Blaina Ironworks Company Limited coloured green on the said plan for the purpose of constructing an incline and carrying the coal down to the railway and for the purpose of constructing screens and sidings and for any incidental purpose necessary for the efficient working of the mine.

(b) A right to use the mineral railway and the sidings of the Objectors Lancaster's Steam Coal Collieries Limited between the points "A" and "B" and coloured yellow on the plan which said Mineral Railway connects with the Great Western Railway near Coalbrookvale Pit.

Lease defining rights of the parties.

(3) For the purpose of further defining the rights of the parties the Nantyglo and Blaina Ironworks Company Limited shall at the cost of the Applicants grant and the Applicants shall take a Lease of the said Land coloured green upon the terms and conditions set out in the Second Schedule hereto.

Mineral railway.

(9) The Applicants as also the Objectors Lancaster's Steam Coal Collieries Limited shall so use the Mineral Railway as not to unreasonably interfere with or obstruct the working of the Mine or Mines of the other or of their Superior Lessors and their Lessees or Tenants or their traffic over the said Railway and in particular neither the Applicants nor the Objectors shall allow trucks to remain stationary on any part of the through running line between the points marked "B" and "C" on the plan so as to hinder or interfere with other traffic using or requiring to use the through running line.

(10) The Objectors Lancaster's Steam Coal Collieries Limited shall forthwith put into good order and repair the whole of the through running line including the sidings coloured yellow between the points "A" and "B" on the plan and will until the rights granted by this Order shall expire or be determined maintain and keep in good order and repair so much of the through running line and the sidings coloured yellow as is or are between the points marked "B" and "C" on the plan. The Applicants will for a like period maintain and keep in good order and repair so much of the through running line as is between the points "A" and "C" on the plan.

Second Schedule.

Terms of Lease from Nantyglo and Blaina Ironworks Company, Ltd. to J. C. Jenkins & Company.

1. PARCELS. Surface of land coloured green on plan attached to Jenkins' Application subject to any existing right of way (public or private) over the said land and subject to the existing Lease of the Minerals thereunder.
2. TERM. Twenty-six years from June 24, 1924.
3. RENT. £2 per acre and a wayleave of one penny per ton on all coal carried.

THE RURAL DISTRICT COUNCIL OF CALSTOCK.

Ancillary Rights.

(2) The ancillary rights for working the minerals comprised in the said lands are as follows :—

(a) A right to let down or remove the surface on condition that the Applicants make good or pay compensation for all actual damage caused by their working or quarrying either through themselves or their lessees of any buildings on or adjacent to the surface of the said lands.

(b) A right to use and occupy the surface of the said lands for the erection of a light railway and sidings, by product works, dwellings for persons employed in connection with the working of the

said minerals and such other works or buildings as may from time to time be erected in connection with the working of the aforesaid minerals.

(c) A right to carry or convey water by means of pipes water mains or surface works over the said lands.

Protection clause.

(11) The rights hereby granted shall be exercised in such a manner that the land and railway the property of the Southern Railway Company their servants passengers persons or property on or upon the Company's land and railway shall not be damaged injured or affected by the carrying out of any of the said works. Should any such damage arise application can forthwith be made to the Commission by the Southern Railway Company or any persons affected under this paragraph to determine their rights consequent upon such damage or imminent danger. Any question arising out of this paragraph shall be referred to the Commission.

LANCASTER'S STEAM COAL COLLIERIES LIMITED.

Refusal of application.

IT IS ORDERED that the Applicants' said Application do stand dismissed.

THE MYNACHDY COLLIERY COMPANY LIMITED.

Costs against Applicants.

AND IT IS ORDERED that the Costs incurred by the Objectors after the hearing of the summons for directions including the preparation for the hearing and of the hearing be paid by the Applicants such costs to be taxed by the Taxing Master in case the parties differ.

Provision for the erection and maintenance of a post and wire fence.

(5) The Applicants before exercising any of the ancillary or other rights hereby granted shall erect a post and wire fence of the description usual in Colliery Districts around the sides of the said lands adjacent to the lands of the Objectors to the satisfaction of an Estate Agent and Valuer agreed by the parties or appointed by the Commission. The Applicant shall maintain the said post and wire fence as and when erected during the term hereby granted to the satisfaction of the Objectors and any dispute or difference relating thereto shall be referred to the Registrar of the Commission.

THE NEW HUCKNALL COLLIERY COMPANY LIMITED.

Body of Order—Costs granted to Applicants.

AND IT IS ORDERED that the Costs incurred by the Applicants herein be paid by the Objectors such costs to be taxed by the Taxing Master in case the parties differ thereon.

Right of airway and underground wayleave.

(4) The Applicants shall be at liberty to have a right of airway and underground wayleave for the purpose of access to or conveyance of the said minerals or other minerals worked and gotten from under other lands or hereditaments or for the ventilation of the mine without payment by the Applicants of any consideration for such liberty as aforesaid.

THE CAMPBELTOWN COAL COMPANY LIMITED.

Barrier to prevent water in old workings from finding its way into new.

(4) A barrier of at least 40 yards in width shall be left upon the old workings to the south to prevent water in the said old workings from finding its way into the present day workings.

THE EARL FITZWILLIAM.

Payment into Court where persons to whom consideration is payable cannot be found.

(15) Where the person or persons to whom any consideration is payable under this Order cannot be found or ascertained within one year from the date when the Applicant is entitled to commence working the said minerals as aforesaid the said consideration payable to such person or persons as aforesaid shall be paid by the said Ralph Frederick Pawsey

into the Court of the Railway and Canal Commission or otherwise deal with the same as the Court may direct.

Provision for appeal from the Registrar to the Court.

(17) In every case where there is an appeal to the Registrar there shall be an appeal from the Registrar to the Court.

MESSRS. ROBERT HEATH AND LOW MOOR LIMITED.

Conveyance of land to Applicants and to Objectors.

(1) Taylors to grant to the Applicants a Conveyance of land marked D on Plan No. 2.

(2) Applicants to grant Conveyance to Taylors of land marked E on Plan No. 2.

Consideration including the purchase from Applicants of supplies of iron.

(4) So long as Taylors are willing to purchase from the Applicants a substantial proportion of their supplies of iron.

Supply of trucks and wagons and facilities.

(7) The necessary alterations to Taylors' sidings together with the construction of a short siding to deal with the trucks for disposal of refuse to be made by Applicants free of charges.

(8) Applicants undertake to provide a reasonable supply of suitable empty wagons for the cold refuse produced in Respondents' trade as Chain Makers and upon them being loaded Applicants undertake to remove and empty the wagons for which Respondents undertake to pay Applicants the actual cost to Applicants of emptying.

Agreement to pay part Costs of Objectors.

Applicants agree to pay Taylors £275 towards their costs in the case.

MESSRS. BURNYEAT, BROWN & COMPANY LIMITED.

Transfer of right to work minerals.

(2) For the purpose of more conveniently carrying into effect the grant conferred upon the Applicants by this Order the Objectors shall assign to the Applicants all their rights and interest in the said minerals comprised in the said lands coloured pink and marked "A" "B" "C" "D" and "E" for the residue of the respective terms for which the said minerals are leased or assigned to the Objectors as aforesaid but subject to the covenants and conditions of the leases so far as the same are applicable to the premises assigned.

(3) The minerals comprised in the lands marked "E" to the west of the Risca Fault where found in each of the said seams may be extracted and worked by the Applicants through their Nine Mile Point Collieries and the minerals in the same lands to the east of the said fault where found in each seam may be extracted and worked through the Risca pits of the United National Collieries Limited a Company under the same control as the Applicants.

(4) As consideration for the rights granted to the Applicants and/or their associated company the said United National Collieries Limited under this Order, the Applicants shall:—

(a) Transfer or cause to be transferred to the Objectors the right to work all the minerals contained in all the seams of coal lying within and under an area of 112 acres coloured brown on the said plan and bounded on the south by the line thereon marked A—B as are owned by or in lease to the Applicants or the said United National Collieries Limited and also the minerals described in sub-paragraph (ii) of this paragraph. Subject to the provisions in this Schedule contained such transfer shall be effected in the manner and upon the terms following, that is to say:—

(i) As to the said minerals lying within and under such part of the said lands coloured brown as is numbered 8 upon the said plan, the Applicants shall grant a lease to the Objectors upon the same terms in so far as the same are applicable thereto as those contained in the said lease dated 26th October 1923 from Lord Tredegar to the Objectors save that the term shall commence on the date hereon and shall end on the 31st December 1980.

(ii) As to the said minerals lying within and under an area of

4,794 acres or thereabouts being the part numbered 4 of the said lands coloured brown as lie below the level of the bed of the Sirhowy River (including a seam of coal known as the Rock Vein) and which are not included in a lease dated the 30th June 1904 from Martha Watts and others to the Applicants, the Applicants shall grant to the Objectors a sub-lease upon the same terms as those contained in the said lease dated the 26th October 1923 from Lord Tredegar to the Objectors in so far as the same are applicable thereto and can be granted or obtained by the Applicants.

(iii) As to all the said minerals other than those specified in sub-paragraphs (i) and (ii) of this paragraph and comprised within the said lands coloured brown the Applicants shall assign to the Objectors all their rights under their leases of such materials for the residues of the terms respectively granted by such leases subject to an apportionment of the fixed or dead rents payable under the said leases and to the covenants and conditions contained therein so far as they are applicable to the premises assigned and

(b) Pay to the Objectors the sum of £1,258 12s. 4d. being the fixed or dead rents already paid by the Objectors under their said leases in respect of the said minerals within the said lands "A" "B" "C" "D" and "E" and which are recoverable by the Applicants as assignees of the said minerals.

Protective clause for owner or occupier of premises on surface.

(8) For the protection of Mrs. Rachel Jane Waygood and/or the owner or occupier for the time being of Twyn Gwyn Cottage Ynyssdu in the County of Monmouth, the Applicants shall be under the obligation to pay compensation for any damage caused to the said Twyn Gwyn Cottage by reason or in consequence of the working and getting of the minerals hereby authorised to be worked or otherwise howsoever in connection with the exercise of the rights granted by this Order.

THE MARKHAM MAIN COLLIERY COMPANY LIMITED.

Ancillary right.

(3) The applicants shall be at liberty to let down the surface of the described lands including the superincumbent and adjacent strata up to and including the surface on condition that they make good or pay compensation as hereinafter set out for all actual damage caused by their workings of the minerals to the said surface of the described lands, and to existing and future buildings works and things erected constructed or growing thereon. For the purpose of making good any such damage and in order to avoid or minimise any such damage the Applicants shall be at liberty at any time after reasonable notice given to the owner or owners thereof to enter upon the surface of any of the lands affected by this Order and to bolt and strap any building or place struts against the same or otherwise strengthen or reinforce the same. Provided that except as regards the percentage of royalty payable to owners of copyhold areas as provided in Clause 5 of this Schedule; Nothing herein contained shall affect the respective rights and obligations of the Lessor and Lessee under an Indenture of Lease dated the 31st December 1924 and made between the said Earl Fitzwilliam and the Applicants.

Underground access.

(4) The Applicants shall be at liberty to have underground access to and to convey through each hereditament separately owned or controlled within the described lands coal worked and gotten from under other lands and hereditaments; and to use the said underground mines and ways for the purpose of draining and ventilating as well the minerals under the described lands as minerals under other lands worked in conjunction therewith.

Royalty payable to copyholders.

(5) In respect of coal underlying those portions of the described lands which were on the 31st December 1924 of copyhold or of customary hold tenure (hereinafter referred to as Copyhold areas) the Applicants being already under obligation under an Indenture of Lease dated the 31st December 1924 to pay full royalty therefor to The Right Honourable

Earl Fitzwilliam as Lord of the manor of Armthorpe the said Earl or his successors in estate as royalty owners of coal worked in such areas shall pay to the owners of the respective copyhold areas 33⅓ per cent. of the royalty from time to time received by the said royalty owner from the Applicants in respect of such coal as and when the same shall have been worked by the Applicants from under the respective Copyhold areas.

Damage by subsidence (mere subsidence without damage gives no case for compensation).

(16) Subject to paragraph (15) hereof, in case any damage shall be caused to the described lands, or any buildings works or structures for the time being thereon by reason or in consequence of the working and getting of the minerals hereby authorised to be worked or otherwise howsoever in connection with the exercise of the rights granted by this Order and if the Applicants shall have failed for six months after receiving notice of such damage to make good the same then and in such case compensation shall be payable by the Applicants as provided by paragraph (3) hereof; but mere subsidence without actual damage shall not give rise to a claim for compensation; and in case of any difference under this paragraph, the same shall be referred to the Commission.

Expenses incurred in apportioning and paying royalties or compensation.

(21) One-half of the expenses certified by the Registrar as properly incurred in measuring up ascertaining apportioning and paying out the royalty or compensation which the Applicants are to pay in pursuance of this Order shall be deducted *pro rata* from the said royalty or compensation from time to time payable to the persons interested therein. The remaining one-half of the said expenses shall be paid by the Applicants.

THE SHEFFIELD COAL COMPANY LIMITED AND THE ASTON COAL COMPANY LIMITED.

Protective clause—Derby County Council.

(2) The method of working is to be by underground workings only and by means of the system known as "the Longwall method" as to all the said minerals except the said Parkgate Seam of Coal lying within and under the said Beighton Village which will be carried to the Applicants' East Pit and will be worked by the system known as " the Bord and Pillar " method. This exception shall not extend to any part of the said Parkgate Seam of Coal lying within a horizontal distance of 200 yards from the outer walls of Beighton Council School belonging to the Derbyshire County Council. Whensoever " the Longwall method " is employed by the Applicants in pursuance of any powers hereby given the working face in each seam so far as practicable is to be kept in a straight line and advanced in a regular manner.

The Applicants shall give notice to the Derbyshire County Council when their workings in either seam reach a point 200 yards from the outer walls of the said Beighton Council School.

(i) *Ancillary rights and* (ii) *provision to make good or to avoid or minimise damage.*

(3) Where power to let down is not already vested in the Applicants or otherwise exercisable by them the Applicants shall be at liberty to let down the surface of the described lands in accordance with the provisions hereinafter contained including the superincumbent and adjacent strata up to and including the surface on condition that they make good or pay compensation in accordance with the provisions hereinafter contained for all actual damage caused by their workings to the surface of the described lands and to existing and future buildings works and things erected constructed or anything growing thereon Provided that nothing in this Order shall extend to make the Applicants liable to make good or to pay compensation for damage caused to any part of the surface of the described lands or to the buildings and other things thereon from which at the date of this Order the Applicants are entitled to withdraw support without paying compensation for damage occasioned thereby.

For the purpose of making good any such damage and in order to avoid or minimise any such damage the Applicants shall be at liberty with leave of the Court at any time after reasonable notice given to the Owner or Owners thereof to enter upon the surface of any part of

the lands affected by this Order and to bolt and strap any building or place struts against the same or otherwise strengthen or reinforce the same or carry out such other works or repairs as may be in their opinion necessary or advisable. Nothing herein contained shall authorise the Applicants to enter upon any of the described lands vested in or under the control or within the powers or jurisdiction of the West Riding of Yorkshire County Council or the Derbyshire County Council without the leave of this Commission.

West Riding of Yorkshire County Council—protective clause.

(4) The West Riding of Yorkshire County Council or the Derbyshire County Council as the case may be shall give notice to the Applicants of any works or repairs which the County Council propose to carry out and in respect of which they intend to claim compensation from the Applicants so as to give the Applicants an opportunity of inspecting before the said works or repairs are commenced the condition of the described lands in respect of which the Notice is given.

The Applicants shall pay and reimburse to the County Council concerned such sums of money as may from time to time be expended by the County Council in carrying out such works or repairs including such temporary accommodation as may be necessary pending the carrying out and completion of the said works or repairs.

In case of any dispute or difference between the County Council concerned and the Applicants as to the sums to be paid by the Applicants such dispute or difference shall be referred to the Commission.

Underground access.

(5) The Applicants shall be at liberty to have underground access to and to convey through each hereditament separately owned or controlled being part of the described lands coal worked and gotten from under other lands and hereditaments and to use the said underground mines and ways for the purpose of draining and ventilating and to maintain roadways erect pumping stations and carry out such other underground works as may in the Applicants' opinion be necessary in accordance with the usual mining practice in the district as well the minerals under the described lands as minerals under other lands worked in conjunction therewith without making any payment for the said privileges rights and liberties.

Aston and Wales Inclosure Act, 1766.

(6) Nothing in this Order contained shall prejudicially affect any rights powers immunities or obligations which are now vested in or chargeable against the Verelst Devisees whether under the Aston and Wales Inclosure Act 1766 or the Indenture of Lease and Release dated the 14th and 15th September 1775 executed when Harry Verelst acquired title from the Earl and Countess of Holdernesse or otherwise howsoever.

Protective clauses—South Rotherham & Kiveton Park District Isolation Hospital and Aston Swallownest Council School.

(15) When the Applicants' workings shall approach within 250 yards of the Hostel in connection with the South Rotherham and Kiveton Park District Isolation Hospital or the Aston Swallownest Council School the Applicants shall give notice to the Joint Committee responsible for the management of the said Hostel or the West Riding of Yorkshire County Council (as the case may be) and within one month of the receipt by them of the said notice a mining engineer appointed by the said Joint Committee or the said County Council (as the case may be) and a mining engineer appointed by the Applicants shall meet and determine what pillar of coal in the Parkgate Seam (if any) is requisite or necessary for the support of the said Hostel or Council School respectively any dispute hereunder to be referable to the Commission.

After giving such notice as aforesaid and pending the determination of the said question the Applicants may bring their workings to within a distance of 175 yards from the said Hostel or Council School but until such question is determined as aforesaid the said workings shall not approach the said Hostel or Council School nearer than the said distance of 175 yards.

The Applicants shall not work any coal so left as aforesaid without the consent of the Commission PROVIDED ALWAYS that the leaving of any such pillar of coal shall be without prejudice to the rights of the

Verelst Devisees or their successors in title or other the person or persons or Companies in whom the said coal may be vested from time to time to take such proceedings as they may be advised for determining the liability of the said Hospital Committee or any other Authority or body person or persons to pay compensation for the said Coal so left as aforesaid and the person or persons or Companies to whom such compensation (if any) shall be payable and the amount thereof.

Default by Applicants in making payment.

(23) In case of default by the Applicants in making payments of money for consideration or Royalty for thirty days after the same shall be certified to be due any person or persons interested shall have power subject to the leave of the Commission to distrain any chattels of the Applicants in or about the mines of the Applicants rendering any surplus to the Applicants.

THE MANNERS COLLIERY COMPANY LIMITED.

Accounts showing Extent of Working.

(7) (2) The Applicants shall keep accurate accounts of the area worked out from time to time and shall furnish copies half yearly to the persons entitled to the royalty.

Ancillary rights and Indemnification of Trustees.

(9) The Applicants shall have liberty to let down the said lands and lands adjacent thereto overlying the Kilburn seam. In case any damage shall be caused to any lands or to any buildings works or structures for the time being thereon or to any part of the strata overlying the Kilburn seam by reason or in consequence of the working and getting of the minerals hereby authorised to be worked or the leaving of pillars or barriers or otherwise howsoever in connection with the exercise of the right granted by this Order then the Applicants shall be responsible and shall pay compensation for such damage but mere subsidence without actual damage shall not give rise to a claim for compensation and in case any difference shall arise under this paragraph the said difference shall be referred to the Commission. The Applicants shall indemnify the Manson Trustees and the Governors of the Scargill Foundation against all claims made by surface owners and others arising out of the working of the minerals.

Canal Company's Private Act and Common Law. Rights accruing under.

(10) The Applicants shall pay to the Company of Proprietors of the Erewash Canal Company in the Counties of Derby and Nottingham (hereinafter called "the Canal Company") such compensation as in default of Agreement the Commission shall decide (and in arriving at such decision the rights accruing to the Canal Company under their private Act or Common Law shall not be deemed to be prejudiced hereby) for damage to the Erewash Canal and the bridges, roads, approaches, works and conveniences belonging to the Canal Company in connection with the said Canal or which the Canal Company is liable to maintain and keep in repair caused by or resulting from the working by the Applicants of the Kilburn seam lying within and under the said lands or under the said Canal or within or under the lands adjacent thereto and lying on the North, North-East and East thereof Provided always that the terms and conditions of the Agreement dated the 5th day of August 1925 and made between the Canal Company of the one part and the Applicants of the other part shall not apply to the said minerals or any part thereof and that the Canal Company shall be under no liability whatsoever in respect of the working by the Applicants of the minerals, the subject of this Order, and that mere subsidence without actual damage shall not give rise to a claim for compensation.

Flooding by Canal by reason of working under.

(11) No liability whatsoever shall attach to the Canal Company if the waters of the said Canal shall enter the Mines of the Applicants or shall cause damage or flooding thereof as the result of the working by the Applicants of the Kilburn seam lying within and under the said lands or the said Canal or the lands adjacent to the said Canal and lying to the North and North-East and East thereof.

Default in Payment of. Time extended to forty-two days.

(13) In case of default by the Applicants in making payment for 42 days after the same shall become due the owners interested shall have power to distrain any chattels of the said Applicants in or about the mines which are authorised to be worked or any neighbouring colliery lands or works held or occupied by the Applicants in connection with such mines rendering any realised surplus to the Applicants.

THE LLAY MAIN COLLIERIES LIMITED.

Ancillary Rights. Water Supply. Electrical Supply. Railway for maintenance of villages.

(2) (a) The right to abstract not more than 1,400,000 gallons of water per week from the River Alyn shown coloured green on the said Plan No. 1 at or near the point marked " P " on the said Plan No. 2 by means of a pump or pumps located thereat and so far as may be necessary to use and consume such water at or in connection with the Colliery of the Applicants working the said minerals.

(b) The right to dispose of water or other liquid matter obtained from the said mines and works at the said Colliery of the Applicants into the said River Alyn at the point marked " Q " on the said Plan No. 2.

(c) For the purpose of such disposal the right to discharge the said water or other liquid matter partly by means of a pipe line and partly by means of an open channel lying between the points marked " D " and " Q " on the said Plan No. 2 along which the said water or other liquid matter will gravitate to the said River Alyn.

(d) The right to use the said lands coloured blue on the said Plan numbered 2 for the purpose of laying and maintaining thereon or therein a cable or cables upon properly insulated poles or otherwise for the transmission of electrical energy for the working of the pump or pumps used for the abstraction of water from the said River Alyn and for the transmission of electrical energy along the said cable or cables for any other purposes (including the lighting of and supply of power to the Mining Villages hereinafter mentioned) that may be to the advantage of the Applicants in the working of their said Colliery.

(e) The right to use the Railway laid upon the said lands coloured blue on the said Plan No. 2 for the carriage thereon of materials for the construction, repair, and maintenance of the houses, shops, churches, schools, places of entertainment, and other buildings, erections, premises and amenities in or of the Mining Villages near to the said Colliery of the Applicants, goods, stores, and materials of all descriptions (including foodstuffs) for the inhabitants of the said Villages or for any local authority or statutory undertaking having works in the neighbourhood of the said Colliery of the Applicants or near the said Mining Villages.

Surplus Water. Pollution of River. Compensation, etc.

(3) (a) So much of the water abstracted from the said River Alyn as is not used and consumed at the Applicants' said Colliery shall be returned to the said River and the Applicants shall use their best endeavours by pumping or otherwise to discharge such an amount of water as will make up the difference between the quantity abstracted and the quantity returned as in this sub-clause mentioned.

(b) The Applicants shall throughout the period of discharge at all time render the water or other liquid matter discharged by them into the said River Alyn free from matter poisonous or injurious to fish or to the spawn or food of fish or spawning beds and otherwise free from poisonous or other polluting matter. Any claims for injunctions or damages arising from any alleged breach of this clause to be referred to this Commission.

(c) The temperature of the water or other liquid matter discharged as aforesaid shall not be more than 60 degrees Fahrenheit measured at the centre of the flow at a point one yard away from the place where such discharged water enters the River Alyn.

(d) The quantity of water abstracted from the said River Alyn shall be measured or otherwise ascertained at the intake and the Applicants shall provide and maintain suitable means for measuring or otherwise ascertaining such Quantity.

(e) The BOARD of Conservators of the River Dee Fishery District shall have liberty at all reasonable times to inspect the record of the

Applicants of the quantity of water abstracted as aforesaid and the means for measuring or otherwise ascertaining the same and shall also be at liberty to take samples of the discharged water or liquid matter at the point of discharge.

(f) The cable or cables laid or erected in or upon the said lands coloured blue on the said Plan No. 2 shall be laid or erected and maintained in such a manner as to obviate so far as reasonably practicable any danger or damage to the Objector Llewellyn Carless Foulkes Attwood and/or his tenants and/or their licensees.

(g) The Applicants shall pay to the said Llewellyn Carless Foulkes Attwood the compensation or consideration following namely :—

(1) The sum of £50 per annum in respect of the rights mentioned in sub-paragraphs (a) (b) and (c) of Paragraph 2 hereof so long as such rights or any of them are or is exercised by the Applicants.

(2) In respect of the right mentioned in sub-paragraph (d) of Paragraph 2 hereof the sum of £10 per annum so long as such right is exercised by the Applicants and

(3) In respect of the right mentioned in sub-paragraph (e) of Paragraph 2 hereof the sum of One shilling per truck of the materials and other things so carried.

(h) The Applicants shall make good any damage done to the lands of the Objector Llewellyn Carless Foulkes Attwood lying between the said points marked " D " and " Q " on the said Plan No. 2 by reason of the discharge of water or liquid matter as aforesaid whenever such damage shall be caused.

Protective Clause under Salmon and Freshwater Fisheries Act, 1923.

(6) Nothing in this Order shall prejudice alter or affect any right of the Board of Conservators of the River Dee Fishery District under the Salmon and Freshwater Fisheries Act, 1923.

J. & J. CHARLESWORTH LIMITED.

Wayleave under Church, etc.

(8) The Applicants shall be at liberty to drive and maintain a main road under the site occupied by the Church of Holy Trinity Rothwell aforesaid and its graveyard, the said roadway not to exceed 12 feet in width and eight feet in height PROVIDED ALWAYS that no coal other than the coal necessary to drive and construct and maintain the said roadway shall be worked or extracted from under the said Church of Holy Trinity and its graveyard.

Public Acts.

(16) With regard to whatever within the described lands is subject to the provisions of the Waterworks Clauses Acts 1847 and 1871 or the Public Health Act 1875 (Support of Sewers) Amendment Act 1883 and the Statutes incorporated therewith the provisions of these statutes shall apply and be deemed to be inserted herein PROVIDED ALWAYS that no Statutory or other undertakers or Public Authorities or Bodies shall acquire any greater or further right to support by virtue hereof than they were entitled to immediately before the date of this Order.

Persons not Sui Juris.

(25) Persons who are not *sui juris* may be represented in the manner prescribed by the Settled Land Act 1925 or any modification of that Statute.

INGHAM'S THORNHILL COLLIERIES LIMITED.

Erection of Temporary Accommodation, Cost of.

(9) Nothing herein contained shall authorise the Applicants to enter upon any of the described lands vested in or under the control or within the powers or jurisdiction of the said County Council of the West Riding of Yorkshire. The County Council shall give notice to the Applicants of any works or repairs which the County Council propose to carry out and in respect of which they intend to claim compensation from the Applicants as the result of the rights granted by this Order so as to give the Applicants an opportunity of inspecting before the said works or repairs are commenced the condition of the described lands in respect of which the notice is given.

The Applicants shall pay and reimburse to the County Council such sums of money as may from time to time be expended by the County Council in carrying out such works or repairs including such temporary accommodation as may be necessary pending the carrying out and completion of the said works or repairs.

Maintenance of River Banks.

(10) With regard to so much of the described lands as are within the jurisdiction or under the control or authority of the Dewsbury Corporation (which expression shall include the Dewsbury Joint Hospital Board) the Applicants shall be required by the said Dewsbury Corporation and after notice in writing has been given by them to the Applicants to that effect raise or lower the North Bank of the River Calder in order as far as may be possible to maintain the said River at the level existing prior to the date of this Order PROVIDED ALWAYS that nothing herein contained shall apply to so much of the North Bank of the said River as lies immediately adjacent to the minerals delineated coloured brown on the said plan within the area numbered 2 and marked Ingham John Dearden thereon and owned by the Applicants in fee simple and lying within the area administered by the said Dewsbury Corporation.

(11) The Applicants shall make good any loss in height which may be occasioned to such part of the Bank of the River Calder as immediately adjoins the Calder Vale Mills Healy Ossett the property of Messrs. Fawcett & Firth Limited whose registered office is situate in the area numbered 2 on the said plan as the result of the exercise by the Applicants of the rights granted by this Order and shall raise the said bank to the height at which it stood immediately before the date of this Order and shall maintain and continue to maintain the said bank at the said height throughout the period of working granted by this Order to the satisfaction of Messrs. Fawcett & Firth Limited.

Maintenance of Weir.

(12) In respect of so much of the said minerals as lie immediately under the Weir situate in the Area numbered 2 on the said plan and being directly adjacent to the Area halved red and blue colours at the point marked " D " thereon the said Weir being delineated with the word " weir " thereon the Applicants shall only work the said minerals on condition that they raise maintain and continue to maintain the said Weir and the water therein contained at the height at which it and the said water stood immediately before the date of this Order and to the satisfaction of John William Smith Limited the proprietors of the Healey Old Mills Healey Ossett whose registered office is situate at the said Healey Old Mills and the Applicants shall raise the banks lying on each side of the mill race delineated on the said plan with two parallel thin black lines and lettered " Mill Stream " thereon leading from the said Weir to the said Healey Old Mills to the height at which they stood immediately before the date of this Order, so as to maintain and continue to maintain the flow of water in the said mill race in as full ample and effective a manner as it existed immediately before the date of this Order to the satisfaction of the said John William Smith Limited PROVIDED ALWAYS that nothing herein contained shall relieve the Applicants of their liability to pay for damage (including consequential damage) arising from the working of the said minerals in accordance with the provisions contained in paragraph 3 hereof.

Protective Clause. Gas Works and Gas Holders.

(13) When the Applicants workings shall approach within 100 yards of the Gas Works and Gas Holders, the property of the Ossett Corporation situate at Healey Ossett and lying within the parcel delineated with halved blue and red columns in area numbered 2 on the said plan immediately to the North of the point marked with the letter " F " thereon the Applicants shall give notice to the said Ossett Corporation and within one month of the receipt by them of the said Notice a Mining Engineer appointed by the said Ossett Corporation and a Mining Engineer appointed by the Applicants shall meet and determine the size of the pillars requisite and necessary for the support of the said Gas Works and Gas Holders on the half and half system of working.

The Applicants shall continue their workings up to a point lying 75 yards from the said Gas Works and Gas Holders after delivery of

the said Notice and if within 28 days of the delivery of the Notice and no counter notice is served on the Applicants as to any variations of the pillars in the Applicants' proposed system of working the Applicants shall continue to work on the half and half system under the said Gas Works and Gas Holders in accordance therewith.

J. & J. CHARLESWORTH LIMITED.

Pumping of Waterlogged Goaf.

(18) The Applicants shall on or before the 1st January 1929 commence to work the coal hereby authorised to be worked and gotten with due diligence and in a proper and workmanlike manner in accordance with the usual mining practice in the district and they shall before the date aforesaid drain and pump the area of waterlogged goaf situate in the Silkstone Seam and lying immediately adjacent to the line K—X shown on the said plan. During the period hereby granted the Applicants shall continue to drain and pump the aforesaid waterlogged area and if at any time before the said 13th July, 1948, they shall discontinue pumping and draining the said area the right of working the said minerals shall with the leave of the Commission vest in the said Henry Briggs Son & Company Limited.

(19) As and from the 1st January 1929 and during the remainder of the term granted by this Order the Applicants shall continue to drain and to keep reasonably free from water the goaf referred to in paragraph 18 hereof and they shall continue to work the coal hereby authorised to be worked and gotten upon a commercial scale and in a workmanlike manner and with due diligence according to the usual mining practice in the district until the said coal is worked out.

If at any time during the said term the Applicants shall fail to keep the said goaf reasonably free from water or if in any year before the same is worked out they shall fail to work the said coal upon a commercial scale and with due diligence then and in any such case the Objectors Messrs. Henry Briggs Son & Co. Ltd. may apply to the Commission for an Order that the rights or any of them granted by this Order to the Applicants shall vest in the said Henry Briggs Son & Co. Ltd. and if the Commission shall make any such Order then the rights hereby granted to the Applicants or such of them as are by the said Order directed to vest in the said Henry Briggs Son & Co. Ltd. shall absolutely cease and determine. Provided that if at any time the Applicants shall discontinue the said workings or the said drainage they shall give notice thereof in writing to the said Henry Briggs Son & Company Limited.

LLWYNFFYNNON COLLIERY COMPANY LIMITED.

Ancillary Right. Tramways. Railways. Sidings Junctions, etc.

(2) The Applicants are granted the following ancillary rights namely :—

(a) The right together with the Respondents to use the tramways railways siding junctions and tip belonging to the Respondents as specified hereunder for the carriage thereon of their coal minerals and other substances or materials :—

(i) The tramways delineated on the plan marked "F" from the point marked "A" to the points marked B(1) and B(2) respectively on the said plan.

(ii) The Railways siding and junctions connecting the said tramways of the Respondent with the Great Western Railway from the point marked "C" to the point marked "D" on the said plan.

(iii) The Respondents' tip at the point marked B(2) on the said plan.

(b) The right to erect forthwith at their own expense and thereafter together with the Respondents to use for the purposes aforesaid a screen at the point marked B(2) on the said plan.

(c) The right to construct and lay down at their own expense upon the Respondents' said lands and thereafter to use for the purposes aforesaid the tramways sidings and screen (hereinafter called "the said Works") delineated and drawn in green upon the said plan with such modifications (if any) as the Chief Engineer of the Great Western Railway Company (hereinafter referred to as "the Company") may approve or require.

Ancillary Right. Wayleave. Tonnage.

(4) The said ancillary rights are granted subject to the following conditions namely :—

(a) The Applicants shall pay to the Respondents as consideration for the exercise of the said rights the tonnage rent hereinafter specified on all the applicants' coal minerals and other substances (including timber and other materials taken to the Applicants' Colliery) carried over the said tramways railways sidings junctions screen or tip in pursuance of the said rights :—

(i) As and from the date of this Order and until the said works are completed ready for use a tonnage rent of two pence per imperial ton.

(ii) As and from the date when the said works are completed ready for use a tonnage rent of two and a half pence per imperial ton such tonnage rent to be in extinction of the said tonnage rent of two pence per imperial ton.

(b) If at any time after the completion of the said works and before the expiration of the said term the Respondents give notice in writing to the Applicants of their intention to resume working the coal or other minerals in or under their present takings or any neighbouring or adjacent takings and requiring the Applicants to make such alterations in the then existing screen tramways or sidings as shall provide the Respondents with facilities similar to those now existing then within one calendar month of the receipt by them of the said Notice the Applicants shall at their own expense cause a suitable plan or plans to be prepared of the Works proposed for the purpose aforesaid and shall at their own expense and jointly with the Respondents submit the same for approval to the Chief Engineer of the Company and his decision as to the said plan or plans and any modifications thereon shall be accepted as binding on both parties.

(c) Within three calendar months of the date when the said plan or plans are approved as aforesaid the Applicants shall construct lay down and complete at their own expense upon the Respondents' said lands the proposed new works as set out in the said plan or plans with such modifications (if any) as the Chief Engineer of the Company may require and at the same time shall if the Chief Engineer of the Company shall so direct remove the existing siding belonging to the Respondents on their land from its present position and relay it in a workmanlike manner for one hundred yards from the Company's boundary northwards along the line of the proposed railway set out in green and called " proposed main road " on the said plan and shall also if so required remove the said screen mentioned in clause 2 (b) hereof and shall thereupon cease to use the Respondents' said tip.

(d) That in the construction of the tramway which the Applicants shall be entitled to lay down connecting their present inclined tramway to the new screen to be constructed as aforesaid the Applicants shall cross over the existing tramway of the Respondents by means of a bridge which shall give a clear space of ten feet in width and a clear height above the rails of such last mentioned tramway at the point of crossing of six feet and moreover shall if and when reasonably necessary and when called upon to do so by the Respondents temporarily remove the superstructure of the said bridge at any time and from time to time to enable the Respondents to carry any plant or material which could not otherwise be so carried along their tramroad without let or hindrance.

(e) The Applicants on the completion of the said works and at the commencement of their tipping thereat shall pay to the Respondents the sum of twenty pounds towards the cost of removing the said tip which shall forthwith be removed by the Respondents.

(f) The said screen tramways sidings and other new works referred to in clauses 2 (b) and 2 (c) and 4 (b) hereof respectively or any part thereof when laid down and constructed by the Applicants as aforesaid upon the Respondents' said lands shall subject to the right of pre-emption in the Landlord under the Dunraven Lease be the property of the Applicants except in so far as any of the said new works shall be certified by the Chief Engineer of the Company to be in substitution for any of the existing works now laid upon the Respondents said lands Provided always that if the Applicants shall at any time cease to use or exercise the rights and facilities hereby granted then they shall offer the

said new works (save as hereinbefore excepted) for sale to the Respondents at the removal value of the materials forming the same such value to be determined by this Commission in default of agreement between the two parties.

(g) The user by the Applicants of the railways sidings and junctions hereinbefore referred to and the exercise of the traffic facilities hereby granted shall be subject to the terms and conditions contained in the Railway Agreement so far as the same may be applicable Provided always that any charges which may be incurred by the Applicants in conforming with any demands made by the Company under the terms and conditions of the Railway Agreement the amount of such charges to be certified by the Chief Engineer of the Company (whose certificate shall be conclusive) shall be paid by the Respondents to the Applicants on demand and in default of such payment may be set off by the Applicants against any tonnage rent accrued or accruing due to the Respondents under clause 4 (a) hereof And Provided that the above terms shall be incorporated in a new agreement to which the Applicants the Respondents and the Company shall be parties which agreement shall be similar in form to the standard form of Siding Agreement for the time being in force.

POPE & PEARSON LIMITED.

Gas. Damage to Pipes. Obligation of Company.

24. The Applicants shall be responsible for all damage at any time caused or occasioned by the working of any coal under this Order to the buildings works plant or machinery situate on the area on the plan No. 2 annexed to the said Application of the Normanton Gas Company and their assigns for all claims which may at any time be made by any consumer of gas or any other person arising out of any failure of the Gas Company to supply gas or out of any escape of gas or any other cause whatever consequent upon damage caused by such workings to any of their buildings works plant or machinery situate as aforesaid.

25. In the event of damage being at any time occasioned to any of the buildings works plant or machinery situate as aforesaid of the Normanton Gas Company through or by reason of the working of any coal under this Order the Normanton Gas Company shall not be under any obligation to allow the Applicants to repair or make good the same but shall be at liberty by themselves or by any properly qualified contractor to be chosen by the Gas Company and approved by the Applicants forthwith to execute all reasonable and necessary repairs and to take all or any proper remedial measures and to charge the whole expenditure therein incurred to the Applicants and all such reasonable costs and all proper claims made by the Gas Company under or by virtue of the indemnity in the last preceding clause hereof ordered to be given shall be recoverable upon any application to the Commission.

HENSHAW & BARCOMBE COLLIERY COMPANY LIMITED.

Ancillary Right. Aerial Ropeway. Railway Junctions and Sidings.

3. The Applicants are granted the following ancillary rights, namely :—

(a) The right to erect construct lay down and maintain in and upon Area Number 1 :—

(i) The terminals and terminus of an aerial ropeway in continuance of an aerial ropeway to be constructed from the Applicants' Barcombe Colliery to the said Area Number 1.

(ii) Screens unloading apparatus and a tip and weighing machinery to be constructed in connection with the said aerial ropeway.

(iii) Colliery Offices.

(iv) Railway sidings on engine roads and all necessary junctions and points to be laid down and constructed in connection with the said railway sidings.

All the aforesaid works are coloured pink on Plan Number 4 hereto annexed and signed by the Registrar of the Commission.

(b) The right to construct at their own expense over and across area Number 2 a Bridge for the purpose of carrying the said aerial ropeway over the said Main West Turnpike road at the point numbered 8 on the said Plan Number 2.

(c) The right to convey to their said Barcombe Colliery all minerals

worked by them from their royalty areas or any one of them on and upon the underground roadway referred to in paragraph 2 (a) hereof and to use the said ropeway for all proper purposes of haulage and ventilation purposes.

Ancillary Right. Consideration for—Wayleave—Tonnage. Construction of Railway Junctions, etc.

(5) The said ancilliary rights are granted subject to the following conditions :—

(a) The Applicants shall pay to the Respondents as consideration for the exercise of the said rights the rents and other payments hereinafter specified on all the Applicants' coal and other substances carried over the Applicants' said aerial ropeway railway siding points screens and weigh bridge and for the exercise of the right of tipping and for the user of the said Colliery Offices and the user of the aforesaid underground roadway.

(i) For the exercise of the rights hereinbefore specified over area Number 3 the payment of a wayleave rent of One farthing per ton upon all foreign coal and a Royalty rent of six pence per ton for coal and four pence per ton for fireclay such rents not to come in aid of the certain rent of Henshaw Royalty hereinafter mentioned.

(ii) For the exercise of the rights hereinbefore specified over area Number 1 the payment of a minimum and maximum amount of Twenty five pounds per annum for the first and second years of the said term the payment of a minimum amount of £25 and a further payment of one half penny per ton in respect of foreign coal up to a total maximum amount of Fifty pounds for the third year the payment of a minimum amount of Twenty five pounds and a further payment of one half penny per ton in respect of foreign coal up to a total maximum amount of One hundred pounds for the fourth year and the payment of a minimum amount of Twenty five pounds and a further payment of one half penny per ton in respect of foreign coal up to a total maximum of £150 for the fifth and every subsequent year.

(b) In constructing their said railway junctions sidings and points the Applicants shall comply with all the reasonable and proper requirements of the London and North Eastern Railway Company and shall prepare all necessary and proper plans to be prepared of their said railway junctions sidings and points and shall at their own expense submit the same for the approval of the Chief Engineer of the Company.

(c) The Applicants shall erect and construct all their aforesaid aerial ropeway terminals railway junctions sidings and works so as to cause as little damage as possible to the Respondents' lands and shall maintain and continue to maintain the said works in a proper state of repair.

(d) The said railway junctions sidings points screens and other works or any part thereof when laid down and constructed by the Applicants as aforesaid upon the Respondents' said lands shall be the property of the Applicants PROVIDED ALWAYS that if the Applicants or their successors shall cease to use or exercise the rights and facilities hereby granted over area number 1 they shall offer the said new works for sale to the Respondents at the removal value of the materials forming the same such value to be determined by this Commission in default of agreement between the two parties.

(e) The Applicants in constructing the said bridge and aerial ropeway over area Number 2 shall give a clearance of 20 feet over the said main West Turnpike Road and shall submit their plans and specifications of their said bridge and so much of their said aerial ropeway as crosses the said bridge for the approval of the Northumberland County Council or their Engineer and shall comply with all reasonable requirements of the said County Council.

Account of Minerals carried by Aerial Ropeway. Foreign Coal.

(6) (b) The Applicants shall keep accurate accounts of all minerals carried by them upon the said aerial ropeway and the said underground road.

(h) If the Applicants require to carry any foreign coal over and along any Underground roadway in the said Henshaw Royalty they

shall by Order of this Court on the agreed reference of the Applicants and Respondents pay for the said right and privilege the sum of ¼d. for the first five years of the said term and ½d. for every year thereafter for every ton of foreign coal but not more than one payment to be made in respect of any one ton of coal so carried as aforesaid.

DENABY AND CADEBY MAIN COLLIERIES LIMITED.

Partial amalgamation.

Upon Reading the said Application and the said Scheme; the Order dated the 12th day of January 1927 whereby the said Applicants respectively were ordered to convene separate Meetings of the Holders of their respective Ordinary Shares for the purpose of considering and if thought fit approving with or without modification the said Scheme; and the Certificate of the Registrar certifying that all Notices required by the said Order of the Court had been duly given and that the Meetings of the four Companies had been duly held and that the Resolutions in favour of the Partial Amalgamation were duly carried and that the evidence on which the Certificate had been founded had been duly filed and

Upon Hearing the evidence adduced on behalf of the Applicants at the hearing of the said Application on the 1st and 2nd days of March 1927

And this Court being satisfied that it is in the National interest to confirm the said Scheme of Partial Amalgamation and that the terms of the Scheme are fair and equitable to all persons affected thereby

THIS COURT DOTH HEREBY CONFIRM the said Scheme of Partial Amalgamation as set forth in the print thereof annexed to this Order including the Draft Memorandum and Articles of Association referred to in paragraph 4 of the said Scheme also annexed to this Order AND DOTH DECLARE the same to be binding on all persons and that the Memorandum and Articles of Association of the above-named Companies respectively shall in so far as they may be affected by the said Scheme have effect subject thereto and that the Directors of the said several Companies affected by the said Scheme shall cause an Office Copy of this Order with a copy of the said Scheme and of the draft Memorandum and Articles of Association annexed to be filed with the Joint Stock Registrar forthwith.

TILMANSTONE (KENT) COLLIERIES LIMITED.

Ancillary Right. Aerial Ropeway.

(2) The Applicants are granted the following ancillary rights over the said lands namely :—

The right to erect lay down maintain and use an aerial ropeway (hereinafter referred to as the "said ropeway") from the said Tilmanstone Colliery to the boundary of the property of the Dover Harbour Board at the landward end of the Eastern Arm of Dover Harbour and to link up the same with any part or parts of the said ropeway as are constructed by private arrangement. The said ropeway including all necessary angle Stations protection bridges loading and unloading apparatus bunkers screens loading appliances and weighing machines is to be constructed in accordance with the plans and sections prepared by Sir Alexander Gibb & Partners and filed herein by the Applicants.

Protective Clause—Statutory Company, etc. Plans.

(3) Where the said ropeway crosses the property undertaking road or works of any Statutory Company authority body or undertaking the said ropeway shall be constructed and maintained in accordance with the reasonable requirements and to the reasonable satisfaction of any such Statutory Company authority body or undertaking and due precaution shall be taken in constructing maintaining and using the said ropeway for the protection of the said property undertaking roads or works and of the traffic of the Southern Railway and for the maintenance of the same and the Applicants shall comply with the conditions set out in paragraph 11 hereof in the erection of the said ropeway over any such undertaking roads and works as aforesaid.

(4) The Applicants shall at their own expense produce at their Registered Office all necessary plans and specifications in connection with the construction of the said ropeway and works to any such statutory company authority body or undertaking for their approval in so far as the same is carried over their said property undertakings works and roads, and the said ropeway and works shall not be used unless the same shall

have been constructed and completed in accordance with such approved plans and specifications to the reasonable satisfaction of such company authority or body.

Construction of Ropeway. Obligations. Power to deviate vertically. Right of Access.

(5) Subject to the provisions of paragraph 11 hereof and except in respect of the rights acquired by the Applicants by the Agreement with the Dover Harbour Board Scheduled hereto the Applicants shall be at liberty to deviate vertically from the levels of any of the works shown on the sections deposited with the said application in so far as the same is reasonably necessary for the construction of the said ropeway.

(6) The Applicants and their engineers and contractors and their servants and agents shall be at liberty reasonably to pass and repass over and across the lands of any of the persons set out in the Book of Reference to the deposited plans together with all necessary horses vehicles and motors and materials for the purpose of approaching the line of route of the said ropeway in order to construct lay down erect and maintain the same in accordance with the conditions herein contained Provided that nothing in this Order shall authorise or entitle any person to enter upon or pass over the property of the Southern Railway except at such times and under and in accordance with such reasonable regulations as the Southern Railway or their Engineers may prescribe in writing.

(11) The Applicants in constructing the said ropeway over the property undertakings roads and works of any public authority or statutory company or body and at their request shall leave a clearance of not less than 20 feet from the surface of the road to the underside of the protection bridge carrying the said ropeway over the said undertakings and roads and works PROVIDED ALWAYS that in crossing the undertaking of the Southern Railway Company the said clearance shall not be less than 40 feet measured from rail level.

(12) The Applicants shall complete the construction of the said ropeway and works within a period of two years from the date of this Order.

Rental Charges. Standards. Wayleave. Divide and Power Stations, etc.

(8) The Applicants shall pay to the persons authorities bodies and undertakings (whether Public or Private) over and upon whose lands the said ropeway is erected laid down and carried as consideration for the exercise of the said ancillary rights the rents and payments following :—

(1) For the erection and maintenance of standards for the said ropeway an annual rental of 25s. for arable land and 7s. 6d. for pasture land for each standard so erected.

(2) For the conveyance of the said ropeway over lands an additional rental of 2d. per lineal yard per annum.

(3) In respect of the exercise of the wayleave necessary for the approach to and return from the said ropeway or any standards or works to be constructed or erected in connection therewith and for the purpose of constructing and erecting and laying down the same and maintaining and repairing the said ropeway standards and works as and when constructed the applicants shall pay full compensation for any damage consequent upon the exercise thereof.

(4) For the erection and maintenance of the divide station, and the Engine or power station necessary for the working of the said ropeway to be erected at the said divide station the payment of £5 per annum which said payment shall include the exercise of the wayleave necessary for the control of the said divide station and Engine or power station and for the approach to and return from the said divide and Engine or power station and for the passing and repassing of men vehicles motors goods and materials to and from the said divide station and power station whether for the purposes of construction maintenance or the working thereof.

Termination of Lease. Liability of Applicants to restore Lands to their original condition.

(10) The said ropeway and works or any part thereof when laid down and constructed by the Applicants in accordance with the rights hereby granted shall be the property of the Applicants PROVIDED ALWAYS that the Applicants shall remove the same at their own cost and expense at

the termination of the term hereby granted or such extension of the said period as aforesaid and if requested so to do restore the lands in respect of which the said ancillary rights are granted to their original state and condition as the same were in immediately prior to the Applicants entering therein in so far as the said lands can be reasonably so restored as aforesaid.

Default of Payment.

(16) In case of default by the Applicants in making payment of moneys for 60 days after the same shall be due the persons or any one of them across whose lands undertakings works and things the said ropeway and works are constructed laid down or erected by virtue of this Order shall have power to distrain any chattels of the Applicants in or about the Applicants' Colliery and works or any lands held or occupied by the Applicants in connection with their said Colliery or works rendering any realised surplus to the Applicants.

Damage. Dispute, etc.

(17) All claims for damages alleged to be caused by the Applicants to the persons or any one of them across whose lands undertakings works and things the said ropeway and works are constructed laid down or erected in exercise of the rights conferred by this Order or any dispute as to the moneys payable hereunder or any dispute or difference arising upon the terms of this Order or the rights liberties or privileges hereby granted shall be referred to the Commission.

Obligation to War Department, etc.

(19) The Order is made subject to the Applicants carrying out all proper conditions and requirements of His Majesty's Secretary of State for the War Department in connection with the erection and maintenance of the said bunker on the said Eastern Arm of Dover Harbour.

Estate Rights, Privileges, etc.

(20) Nothing in this Order contained is to affect any estate rights privileges powers or exemptions of the Crown or any rights of the Dover Harbour Board either under the agreement with the Dover Harbour Board Scheduled hereto or otherwise.

Ropeway Use.

(21) The said ropeway shall not be used for the conveyance of any traffic which does not originate at, or is not destined for, the Tilmanstone Colliery of the Applicants.

ASKERN COAL AND IRON COMPANY LIMITED.

Ancillary Right.

(3) (i) The Applicants shall be at liberty to let down the surface of the described lands including superincumbent and adjacent strata up to and including the surface, on condition that

(a) they make good or pay compensation as hereinafter set out for all actual damage (including temporary and permanent damage if any by flooding) caused by their workings of the minerals to the said surface of the described lands and to existing and future buildings works and things erected constructed or anything growing thereon.

Policy of Assurance and Producing of Receipt for Renewal of Premiums.

(3) (b) By way of addition to the rights either at Common Law or by Statute of the County Council and the Drainage Authorities the Applicants shall forthwith effect and thereafter keep up until the said Colliery shall be permanently closed a policy of assurance in the form hereto annexed or make other satisfactory provision to be approved by the Commission that a sum of not less than £1,250 (excluding legal costs) shall at all times be available for the purpose of answering and defraying claims by the West Riding County Council and/or any Drainage Authority and/or other persons concerned for compensation for subsidence damage and/or the cost of making and maintaining remedial works arising from or rendered necessary by or incidental to the mining operations of the Applicants and will continue to provide and maintain pumping stations where necessary within the area covered by the Applicants' mining operations. The Receipt for renewal of the premiums payable in respect of the said policy of assurance shall

be produced to the Registrar of the Commission at the time when the annual return provided for by clause 7 hereof is furnished.

(15). *Fund for Defraying cost of Remedial Works in Perpetuity.*

(i) With regard to whatever within the described lands is subject to the relevant provisions contained in the Railways Clauses Consolidation Act 1845 as amended and extended by Part II of the Mines (Working Facilities and Support) Act, 1923, the Waterworks Clauses Consolidation Act, 1847, the Public Health Act, 1875, (Support of Sewers) Amendment Act, 1883, and the Gas Works Clauses Acts, 1847 and 1871, the said statutory provisions shall apply and be deemed to be to be inserted herein.

(ii) Subject to the provisions of paragraph 3 hereof and to sub-clause (i) of this paragraph as regards anything and everything else within the described lands which is vested in or under the control or within the powers or jurisdiction of the Doncaster Rural District Council or the Dun Drainage Commissioners or the Went Drainage Commissioners or any other local authority or persons acting under or having statutory powers duties or obligations, the Applicants shall make good such damage (if any) as may be caused by the mining operations of the Applicants; or, in the alternative, pay and reimburse such sums of money as may from time to time be reasonably expended by the said respective Council Commissioners local authorities or persons in making equally effective convenient suitable and commodious whatever within the described lands shall have been damaged or interfered with by the mining operations of the Applicants.

(iii) Nothing herein contained shall authorise the Applicants to enter upon the surface of any of the described lands which are now or shall hereafter become vested in or under the control or within the powers or jurisdiction of the West Riding of Yorkshire County Council. The County Council shall give notice to the Applicants of any works or repairs (including the repairs to or the raising of the banks of any drain or dyke) which the County Council propose to carry out and in respect of which they intend to claim compensation from the Applicants as the result of the exercise of the rights granted by this Order, so as to give the Applicants an opportunity of inspecting, before the said works or repairs are commenced, the condition of the described lands in respect of which the notice is given. The Applicants shall pay and reimburse to the County Council such sums of money as may from time to time be reasonably expended by the County Council in carrying out such works or repairs, including such temporary accommodation as may be necessary pending the carrying out and completion of the said works or repairs.

(iv) Provided that if and to such extent as legislation or order having statutory force shall at any future time make it incumbent upon the Applicants to contribute towards a general or district fund for defraying the cost of providing maintaining and carrying on in perpetuity or so long as shall be necessary remedial works for the purpose of dealing with water arising from or land drainage or other works necessitated or affected by mining operations in the locality in which the Colliery of the Applicants is situated, then the special provisions of sub-clauses (ii) and (iii) of this paragraph shall be deemed to be amended accordingly or shall cease to be applicable as the case may be, to the intent that the Applicants shall not be liable doubly or cumulatively.

(v) With reference to the maintenace after the Colliery of the Applicants has ceased to be worked of remedial works for dealing with water arising from or land drainage or other works necessitated or affected by the mining operations of the Applicants the following provisions shall apply, that is to say.

The Applicants shall in each and every year for a period of 80 years commencing from the date of this Order pay into the Court of the Railway and Canal Commission to the credit of the County Council of the West Riding of Yorkshire the sum of £155 and such sums together with all interest accruing thereon shall be accumulated and disbursed for the purposes aforesaid or incidental thereto by the Railway and Canal Commission on application of the said County Council or their successors as the Drainage Authority for the time being of the Administrative County.

Provided that if legislation or order having statutory force shall make

it incumbent upon the Applicants to provide any other sufficient fund for the same purpose, then and from thenceforth the Applicants shall be relieved from the obligation imposed upon them by this sub-clause (v) to the intent that the Applicants shall not be liable doubly or cumulatively.

Policy of Assurance.

In the Court of the Railway and Canal Commission.

Mines (Working Facilities and Support) Acts 1923 to 1925.

In the Matter of an Application by the Askern Coal and Iron Company Limited for an Order granting the right to work coal and to exercise ancillary rights.

WE, THE GUARDIAN ASSURANCE COMPANY LIMITED whose registered office is at 68 King William Street in the City of London hereby undertake that at all times while the Order of the Court of Railway and Canal Commission or any amending order or order substituted therefor in this matter is in operation or capable of being acted upon a sum of £1,000 shall be available for the payment of royalties due to the owners of coal worked in pursuance of the above Order, and that a further sum of not less than £1,250 (excluding legal costs) shall at all times be available for the purpose of answering and defraying claims by the West Riding County Council and/or any Drainage Authority and/or other persons concerned for compensation for subsidence damage and/or the cost of making and maintaining remedial works arising from or rendered necessary by or incidental to the mining operations of the said Askern Coal and Iron Company Limited and their assigns under the said Order of Court or any amending order or order substituted therefor.

THIS undertaking is to operate in case the said Askern Coal and Iron Company Limited or their permitted assigns shall make default in paying the said royalties and compensation and costs and is to continue until it shall be taken over by some other Company or persons approved of by the Court or until the end of twelve calendar months after we shall have notified the Court that we withdraw this undertaking.

DATED this 13th day of January 1928.

WILLIAM EVANS & COMPANY.

Wayleave for foreign coal without payment.

(4) The Applicants shall be at liberty without making any payment therefor to have underground access to and to convey through each hereditament separately owned or controlled under the described lands coal worked and gotten by the Applicants from under other lands and hereditaments whether part of the described lands or not and to use all underground mines and ways being at any time under the described lands for the purpose of draining and ventilating any other mines of the Applicants whether the same be under the described lands or elsewhere and to maintain roadways erect pumping stations and carry out such other underground works as may in the Applicants' opinion be necessary in accordance with the usual mining practice in the district as well for the purpose of working the minerals under the described lands as of working the minerals under other lands worked in conjunction therewith.

AMALGAMATED ANTHRACITE COLLIERIES LIMITED AND OTHERS.

Total amalgamation—scheme confirmed.

UPON HEARING Counsel for the Applicants and the Great Western Railway Company and Hugh Mason Crankshaw to whom this Court gave leave to appear at the Hearing of the said Application by the Order made herein on the 10th day of May 1927 in person

AND THE COURT being of opinion that it would be in the national interest to confirm the said Scheme and that the terms of the said Scheme are fair and equitable to all persons affected thereby

THIS COURT DOTH HEREBY confirm the said Scheme modified as set forth in the copy thereof scheduled hereto pursuant to section 7 of the Mining Industry Act 1926

AND IT IS ORDERED that within 14 days from the date of this Order Notice of the confirmation of the said Scheme together with a copy of this Order be sent by post to all persons or Companies whose names appear in the first column of Exhibit A.M. 7 to the affidavit of Sir Alfred Mond filed the 12th day of April 1927 and in the third column of the Schedule to the

Affidavit of Frederick Alexander Szarvasy at the respective last known addresses of such persons or Companies respectively or at the last known addresses of their respective Solicitors or other Agents mentioned in such Exhibit and Schedule respectively.

AND IT IS ORDERED that in addition to such notices the Applicants shall insert two advertisements to be approved by the Registrar of this Court of the confirmation of the said Scheme in each of the following papers :—

The London Gazette
The Times
The Western Mail
The South Wales Daily News
The Colliery Guardian

one such advertisement to be inserted in each of the above papers in each of the weeks ending the 9th day of July and the 16th day of July respectively

AND IT IS ORDERED that within 21 days from the date of this Order each of the Applicants do file a copy of the said Scheme modified as aforesaid with the Registrar of Companies.

HENRY JOHN HASLEGRAVE AND THOMAS JOHN BELTON.

Ancillary rights—coke ovens and by-product works.

(2) The rights facilities and privileges (hereinafter referred to as "the ancillary rights") granted by this Order are as follows :—

(1) The right for the Applicants either by themselves or through their proposed lessees the Weardale Steel Coal and Coke Company Ltd. in the application named in working the minerals or any part or parts thereof or any other minerals for the time being held by or belonging to the Applicants or such lessees and worked by them in connection with the minerals to withdraw support from the surface of the described lands or any part or parts thereof.

(2) The right for the Applicants either by themselves or through their said lessees without making any payment therefor to carry any minerals whether forming part of the minerals or of any other minerals for the time being held by or belonging to the Applicants or such lessees and worked by them as aforesaid through the mines within and under the described lands or any part or parts thereof.

(3) The right for the Applicants (either by themselves or through their said lessees) to erect maintain and carry on coke ovens and by-product works upon the surface of the described lands.

(4) The right for the Applicants (either by themselves or through their said lessees) to make sink maintain and use all such pits shafts levels drains watercourses and reservoirs and to construct erect maintain and use all such spoilbanks railroads tramroads and other roads bridges buildings works engines machinery and conveniences whatsoever and to do all such things in under upon through or over the described lands or any part thereof as may be necessary or convenient for the purpose of winning, working, getting, carrying away, converting and disposing of the minerals or any such other minerals as aforesaid or any manufactured produce thereof Provided that in the exercise of the said rights the Applicants and their said Lessees shall not enter upon or occupy the surface of any highway without the previous consent in writing of the Highway Authority Provided further that the surface of the described lands shall not be entered upon except after the expiration of such notice to the owners and occupiers thereof including therein the County Council of the Administrative County of the parts of Lindsey in the County of Lincoln or other authority having the control of any drain which may be interfered with as is usually given by a mining lessee to a mining lessor before exercising surface rights in the Doncaster Coalfield and that compensation for surface—occupied for or used for surface purposes shall include such valuation or compensation for loss to growing crops and tenant rights as may be fixed if the parties cannot agree by the Commission.

THE DENABY & CADEBY MAIN COLLIERIES LIMITED.

Consideration of user of property reverting to Lessor.

4E. CONSIDERATION FOR USER OF PROPERTY *reverting to Lessor under the said Barnsley and Parkgate Leases.*

In respect of the exclusive user of the Cadeby Shafts buildings and

other things in paragraph 3 (a) hereof mentioned from the 14th June 1948 in addition to the royalties minimum rents wayleave rent and surface rent hereinbefore provided and also in addition to the rents royalties and sums of money reserved by the said Barnsley and Parkgate Leases the Company shall pay as from the 31st December 1928 to the person or persons for the time being entitled to the reversion to the said Shafts buildings and things the sum (hereinafter called the reversion consideration) of 0.87d. per Imperial ton on all coal raised and drawn through the said Cadeby Shafts.

SHERWOOD COLLIERY COMPANY LIMITED.

Cemetery—indemnity against proceedings for damage to vaults monuments, etc.

(3) (i) . . . AND also that they indemnify and keep indemnified the Mansfield Burial Board from and against all actions proceedings costs claims and demands which may at any time be brought against the said Board by the owner or owners of any vault monument or other building or erection placed or erected within the cemetery of the said Board in respect of any damage caused thereto by the working of any minerals by this Order authorised to be worked.

TILMANSTONE (KENT) COLLIERIES LIMITED 75/1929.

Ancillary right—construction and maintenance of tunnels.

2. The Applicants be granted the following ancillary rights subject to the agreements hereinbefore referred to over the said lands namely :—

(1) The right to vary the erection of the aerial ropeway sanctioned by the said Order dated the 29th day of July 1927 by constructing and laying it down in a new and diverted line between the points lettered X and B delineated on plan 7c and to maintain and use the said ropeway when so laid down and constructed and to link up the same with any other part or parts of the ropeway as are or may be constructed in pursuance of the said Order, or by private arrangement.

(2) The right to drive and construct two parallel tunnels through and under Dover Cliffs between the points lettered " A " and " Z " shown on plan 7c. Each tunnel shall be 1140 feet in length or thereabouts and at the point of entry at " A " the mouth of the tunnels shall be faced with brickwork.

(3) At the point lettered Y on plan 7c to construct an angle station within and under the said Dover Cliffs. The said tunnels shall be formed into one chamber thereat which said chamber shall contain the said angle station. At this point the said tunnels shall be diverted and shall be driven and constructed as two parallel tunnels to the point lettered Z on Plan 7c.

(4) The said two tunnels shall be constructed with a dip towards the sea of 4 inches or thereabouts to the yard and shall be constructed at the varying depths below the surface of the Dover Cliff and part of the land over which the Dover St. Margarets and Martin Mill Light Railway have Statutory Rights to construct their undertaking as shown on the sections set out on Plan 7c and the applicants shall not deviate from the line shown on the said plan and sections either vertically upwards or laterally towards the face of the Cliff without the consent in writing of the Dover St. Margarets and Martin Mill Light Railway Company being first obtained.

(5) The floor of the said 2 tunnels shall emerge from the cliff at the point lettered Z at a height of 80 feet or thereabouts above Ordnance datum.

(6) Each tunnel shall be constructed 13′ in height and 7′ in width or thereabouts. The thickness of the strata between the two tunnels shall be 5 feet or thereabouts.

(7) When it is decided to proceed with the construction of the Dover St. Margarets and Martin Mill Light Railway the applicants shall comply with the reasonable requirements of the said Railway Company for the protection of the said Railway where it crosses over or under the said ropeway and the maintenance of such protective works as may be agreed and shall leave a clearance of not less than 20 feet from the surface of ground to the underside of the protection bridge carrying the said ropeway over the said Railway.

(8) Wherever the chalk or earth work above the tunnels is not capable of safely supporting the said Railway when it is decided to proceed with the construction thereof the Tunnels shall be strengthened by a concrete or brickwork lining and at such intervals as may be necessary throughout the whole length of the tunnels strengthening rings or girders or brick arches shall be inserted. The work provided for in this paragraph shall be constructed to the reasonable satisfaction of the Railway Company.

THE construction of that part of the said ropeway as is varied by this Order shall be constructed in accordance with the plans and sections prepared by Mr. Samuel Hare and filed herein by the Applicants being plans 7C and 7D.

TILMANSTONE (KENT) COLLIERIES LIMITED 77/1928.

Extension of time fixed by final Order.

(2) That the time fixed by the said Order dated the 29th July 1927 for the erecting laying down and maintaining of an aerial ropeway from the said Tilmanstone Colliery to the boundary of the property of the Dover Harbour Board at the landward end of the Eastern Arm of Dover Harbour and to link up the same with any part or parts of the said ropeway as are constructed by private arrangement shall be extended for an additional period of 12 months from the 29th July 1929 (subject to the consent of His Majesty's Principal Secretary of State for the War Department being obtained so far as the lands vested in the said Principal Secretary of State for the War Department are affected by the said extension of time).

J. C. JENKINS & COMPANY.

Assignment of rights.

The Commission being of opinion that it is expedient in the national interest that the ancillary rights to work the minerals granted by the said Order dated 9th January 1925 applied for by the Applicants should be assigned and transferred to the Bargoed Coal Co. Ltd. whose registered office is situate at 4A Lyon Street, Brecon in the County of Brecknock together with the benefit of and the rights obligations and facilities granted by the said Order.

BY CONSENT IT IS ORDERED that the Assignment dated the 14th August 1929 and made between J. C. Jenkins & Co. of the one part and the Bargoed Coal Company Limited of the other part be confirmed and that the ancillary rights granted by the said Order of the 9th January 1925 be now vested in the Bargoed Coal Company Ltd. upon the terms conditions and stipulations contained in the said Order of the 9th January 1925.

LIBERTY for the Bargoed Coal Company and the subjacent and adjacent and surface owners to apply as they may be advised.

THE COMMISSION may review and rescind or vary this Order.

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Printed in Great Britain by The Eastern Press, Ltd., London and Reading.

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